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ABSTRACT

This guide and reference book is designed to help those involved or training to be involved in employee relations in the hotel and catering industry. Chapter 1 attempts to define employee relations. Chapter 2 describes the institutions and parties involved in employee relations in the hotel and catering industry. The focus of chapter 3 is on ideologies and motives--the assumptions and ideas on which the relationships between individuals and institutions are based. Chapter 4 addresses developing effective employment practices. A checklist covers matters about which it is useful for an employer to have a considered employee relations policy. Chapters 5-20 give an introduction to sound employment practice in these areas: recruitment and selection; engagement; pay policies and procedures; maternity provisions; racial discrimination; staff records; retaining and developing staff; trade unions and the employer; communication and consultation with employees; disciplinary rules, procedures, and grievances; dismissal; redundancy; employment rights on the transfer of an undertaking; working conditions; first aid and accidents; and employee relations training. The text is marked with a symbol to indicate a matter requiring a clear policy decision or giving practical suggestions to adopt or to indicate a legal requirement. Checklists and example forms are provided. Contents of the appendices are as follows: glossary; sources for information, advice, and resources; checklist of employment legislation; Code of Practice; and index. (YLB)

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FOR THE HOTEL AND CATERING INDUSTRY

EMPLOYEE RELATIONS

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Employee Relations

A guide and reference book for those involved or training to be involved in employee relations in the hotel and catering industry

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Preface

The first edition of this book was published in 1976 as *Industrial Relations*, in the series *An Approach to Systematic Training*. By 1981, the need for a longer, more comprehensive book had been recognised. The title was changed to *Employee Relations*, broadening the aspects of employee relations in the hotel and catering industry.

Since the last edition was published, new legislation has included the Sex Discrimination Act and Wages Act in 1986, and the Employment Acts of 1988 and 1989. This legislation has increased protection against discrimination, reduced the powers of the wages councils, brought protection against misuse of trade union power, and changed industrial tribunal arrangements. Maternity pay has been replaced by statutory maternity pay, and new regulations control the use of hazardous substances at work. Many minor changes have also been made to previous requirements.

Difficulties in recruiting staff have brought about the need to consider different approaches. Once suitable employees have been found, the employer has a greater need to take steps to keep them.

Further changes are in the pipeline. These include more controls over trade union power. The EC has approved the 'Social Charter' which will affect future legislation in the United Kingdom.

A publication of this sort cannot take the place of detailed, expert advice. While the Hotel and Catering Training Company has made every effort to ensure that the information is correct, *Employee Relations* should not be regarded as a complete or authoritative statement of the law. Readers are urged to seek appropriate guidance when in doubt, and will need to note changes in legislation after October 1990, when this edition was prepared.

The text is clearly signposted throughout:

P indicates a matter requiring a clear policy decision or giving practical suggestions to adopt

L indicates a legal requirement.

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1 Employee relations in the hotel and catering industry

It has been observed that three specialists asked to define 'employee relations' would come up with four different definitions. Although there is no universally accepted meaning, a widely used definition is:

> The practice, or the study of relationships within and between workers, working groups and their organisations and managers, employers and organisations (Marsh *Concise Encyclopaedia of Industrial Relations*).

A simpler definition has been used elsewhere:

> All the issues involved in the reward–work equation.

The reason for the change in title for the fourth edition of this book was that many people in the hotel and catering industry seem to view 'industrial relations' as being concerned only with trade unions and employment law. These *are* important in a consideration of the subject, but there is value in taking a wider view of the activity to embrace:

> All the factors in the relationships between employers, staff, and other individuals and institutions involved in the employment process.

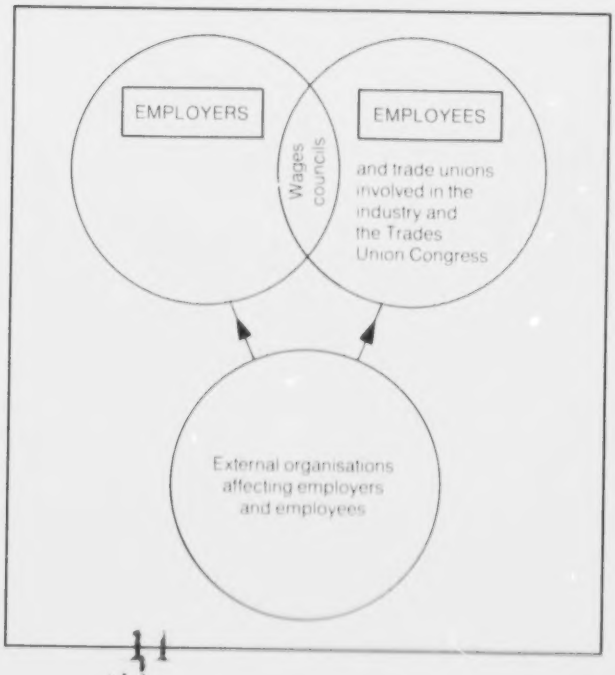
In spite of their lack of agreement on definitions, employee relations specialists are unanimous in saying that to understand any employee relations situation, account must be taken of the *institutions and parties* involved and their *ideologies and motives*. The following pages describe these factors in the hotel and catering industry.

2 Institutions and parties

The institutions and parties involved in employee relations in the hotel and catering industry can be depicted diagrammatically (see below).

The many external organisations affecting employers and employees include: the British Hotels, Restaurants and Caterers Association (BHRCA), the Brewers' Society, the Confederation of British Industry (CBI), the Advisory, Conciliation and Arbitration Service (ACAS), industrial tribunals, the Central Arbitration Committee (CAC), Employment Appeal Tribunal (EAT), Parliament (via employment legislation), colleges and institutions of further and higher education, the Hotel, Catering and Institutional Management Association (HCIMA) and the Hotel and Catering Training Company (HCTC).

Institutions and parties


EMPLOYERS
Wages councils
EMPLOYEES
and trade unions involved in the industry and the Trades Union Congress
External organisations affecting employers and employees

Employers

The hotel and catering industry is made up of many different sizes and types of unit, often engaged in a multiplicity of activities.

These activities share one or more of three functions: the provision of food, accommodation and drink. The various types of establishment that provide these commodities and services can be usefully classified into sectors: hotels, restaurants, the armed forces, hospitals, school meals, employee feeding, clubs, pubs, holiday centres and so forth. Each sector has different characteristics in terms of activity, size, geographical spread, patterns of ownership and type of workforce.

The industry employs more than two million people. Over half of whom are employed in establishments where hotel and catering are the main activities, for instance pubs, hotels and restaurants. The remainder are employed where hotel and catering are subsidiary activities such as hospitals and employee feeding.

After a succession of takeovers, many operating units are now controlled by large companies. For example one company runs a large number of hotels and leisure complexes and has its own contract catering organisation and airport catering division. Other similar organisations operate in the restaurant, brewing, fast food and private hospital sectors. There has also been an increase in the number of franchises operating in the industry.

While these trends have increased the potential for centralised control and standardised procedures, the industry still remains geographically widely scattered, with a relatively small number of staff based at each operating unit – around 20 on average.

All these factors are important in assessing how to develop good employee relations.

Employers' associations

Employers' associations play an important part in negotiating wages and other terms of employment in the welfare sectors of the industry, for example NHS hospitals, education catering and school meals. At a national level in the commercial sector there are no employers' associations as such.

The BHRCA, the Brewers' Society and similar trade associations such as the Restaurateurs Association of Great Britain (RAGB) limit their employee relations activities to the provision of advice to their members on staff and personnel matters and to making representation to government departments, quasi-governmental agencies, European organisations and other public bodies.

Parliament: employment legislation

There is nothing new in Parliament's involvement in employment matters. Even in the *laissez-faire* nineteenth century, laws were passed to regulate some aspects of the relationship between employers and employees. In the 1970s, it was concern over Britain's industrial performance, and over employees' rights that led to the passing of a large number of employment laws.

In 1971 the Industrial Relations Act was passed by the Conservative Government in an attempt to regulate and improve industrial relations. It was repealed in 1974 by the Labour Government's Trade Union and Labour Relations Act, but a number of important parts of the 1971 Act – relating to unfair dismissal and to the code of industrial relations practice – were re-enacted by the 1974 Act. The Labour Government then went on to introduce the Employment Protection Act and other legislation.

Taken together, the employment legislation from 1970–78 introduced a large number of individual rights for employees, and strengthened the position of trade unions. (A summary is shown below.)

- Equal Pay Act 1970
- Contracts of Employment Act 1972
- Trade Union and Labour Relations Act 1974
- Health and Safety at Work, etc. Act 1974
- Sex Discrimination Act 1975
- Employment Protection Act 1975
- Race Relations Act 1976
- Trade Union and Labour Relations (Amendment) Act 1976
- Employment Protection (Consolidation) Act 1978

created or reinforced rights such as

- Equal pay for men & women
- Additional remedies in respect of unfair dismissal
- Time off work for public duties, for trade union duties and activities and training, and to look for new work or to arrange for retraining, if redundant
- Guarantee payments
- Insolvency payments
- Improved minimum period of notice
- More notice of redundancy
- Maternity rights
- Protection against discrimination on grounds of sex, marriage, race or union activity
- Safer and healthier working conditions
- Safety representation
- Disclosure of information to unions
- Fuller written terms of employment to be given to employee together with details of disciplinary procedures

Summary of rights created or reinforced by employment legislation 1970–78

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The legislation also created various bodies to enforce and administer the implementation. The role of industrial tribunals was extended, the Central Arbitration Committee (CAC) and Employment Appeal Tribunal (EAT) were established. The Advisory, Conciliation and Arbitration Service (ACAS) was set up in place of the Conciliation and Arbitration Service.

Legislation introduced in the 1980s by the Conservative Government included the Employment Acts of 1980, 1982, 1988 and 1989, the Trade Union Act of 1984, the Sex Discrimination Act 1986 and the Wages Act 1986. These have a number of aims:

- to define and more clearly regulate the rights and activities of trade unions and their members, ending statutory protection for the closed shop
- to assist employers (particularly small employers) by changing some of the unfair dismissal provisions
- to make adjustments to aspects of previous law, such as the administration of guarantee pay, and the repeal of the Truck Acts
- to deal with other, specific, areas such as the creation of the right to time off work for antenatal care
- to strengthen and increase protection against discrimination.

The European Parliament will continue to seek to bring British employment law into line with the rest of Europe.

Industrial tribunals

Unfair dismissal claims, cases of alleged discrimination on grounds of sex, marriage, race, colour, nationality or ethnic origin are dealt with by tribunals, as well as disputes over equal pay and redundancy and a number of other matters. About 30,000 applications are registered each year, over three-quarters of which concern unfair dismissal. Only one-third of cases are heard by a tribunal, the other two-thirds being settled by agreement between the parties or withdrawn. The applicant is successful in about one-third of the cases that reach a tribunal.

The Central Office of Industrial Tribunals for England and Wales is located in London, and the Central Office of Industrial Tribunals for Scotland in Glasgow. There is permanent accommodation for hearing cases at 24 centres in England and Wales and five in Scotland. This is supplemented as necessary by hiring suitable accommodation. On any one day over 50 tribunals will be sitting.

Tribunals are important in two ways. They make decisions based on reason and objectivity and can make various

awards. Secondly, the case law that has built up as a result of the way in which EAT and, to a lesser extent, tribunals decide cases has the effect of helping to define what constitutes good practice in employment matters.

L Remedies available to an employee who has won a tribunal case are determined according to the circumstances and the type of case. For example, an employee who has been unfairly dismissed can be awarded:

- reinstatement or re-engagement, if he or she agrees or
- cash compensation.

The former is preferred by the legislation (your job back, not cash, is the intention), and tribunals are required by law to first consider whether to order reinstatement or re-engagement before they consider awarding compensation. In practice few orders for reinstatement or re-engagement are made.

Cash awards (1990 figures) are calculated according to a formula:

- basic award, related to age, length of service and pay, maximum £5,520; plus
- if appropriate, a compensatory award based on cash loss (actual or potential – the employee is expected to have done what he or she can to mitigate his or her loss), maximum £8,925; plus
- award when employer defaults on a re-employment or reinstatement order: 13–26 weeks' pay, maximum £4,784, or 26–52 weeks, maximum £9,568, if sacking was due to race or sex.

The limit on a week's pay for the purpose of calculating awards is revised from time to time. At the time of publication it was £184 per week. The maximum total award is £24,013, but no award this high has yet been made and about half the awards made have been less than £1,800 and only five per cent of awards have been over £8,000.

A tribunal may hold a pre-hearing assessment if a party to the proceedings, or the tribunal itself, considers that an application is unlikely to succeed. No oral evidence is heard at a pre-hearing assessment. If the tribunal reaches the view that an application has no reasonable prospect of success, it may indicate that pursuit of the application could lead to an order for costs being made against the applicant.

Further powers were given to tribunals under the Employment Act 1989. A tribunal may now require a deposit of up to £150 from one of the parties where the case is considered to have no reasonable chance of success, or

that its pursuit would be frivolous, vexatious, or otherwise unreasonable.

While this edition of *Employee Relations* was being prepared, it was announced that tribunals are to be given powers to award damages for breaches of contract of employment. This will enable an employee to pursue such a claim through the tribunal while it is considering an unfair dismissal case. For example, an employee might ask the tribunal to recover arrears of lost pay if dismissal took place without notice. It will be up to the individual to decide whether the claim is brought through the tribunal, or through the civil court.

The Advisory, Conciliation and Arbitration Service

Employers obviously need assistance in understanding and interpreting employment legislation. The Employment Protection Act 1975, Section 1, provided for this in the setting up of the Advisory, Conciliation and Arbitration Service (ACAS), which also has a range of other duties.

ACAS is an independent body and not subject to directions of any kind from a Minister of the Crown. It has no legal powers to enforce its recommendations, relying on voluntary acceptance of its work. It is Treasury-financed and run by a Council consisting of a chairman and nine members – three independent, three TUC-nominated and three CBI-nominated. The regional offices of ACAS are staffed by people with special industrial relations experience.

The title Advisory, Conciliation and Arbitration Service, partly describes its role. Not generally realised, however, is the considerable amount of advisory work ACAS does, as opposed to the more newsworthy roles of arbitration and conciliation. Overall, ACAS is concerned with the improvement of industrial relations and collective bargaining by:

- providing advice on industrial relations and the development of good personnel practices. This expert advice is free, and employers should not hesitate to call upon it
- conciliation in industrial disputes between employers and trade unions
- conciliation in certain disputes between employers and individual employees (for instance unfair dismissal)
- advice on how to improve collective bargaining procedures
- production of codes of good industrial relations practice. These codes are of great help and importance in the interpretation of employment legislation.

A code of practice is not legally binding: action in law cannot be taken against an employer solely for non-compliance with a code. Provisions of a relevant code can, however, be taken into account in proceedings before a tribunal. Tribunals would be likely to find that failure by an employer to observe the fundamental recommendations of a code would constitute an unreasonable action.

ACAS codes of practice include *Disciplinary Practice and Procedures in Employment* (reproduced in Appendix IV), *Disclosure of Information to Trade Unions for Collective Bargaining Purposes* and *Time off for Trade Union Duties and Activities*

The Employment Act, 1980, Section 3, provides for further codes on other topics to be developed. Such codes (for example, those on *Picketing* and the *Closed Shop*) may be issued by the Secretary of State for Employment, if necessary after consultation with ACAS.

Central Arbitration Committee

The Central Arbitration Committee (CAC) is mainly concerned with arbitration on matters relating to disputes over the disclosure of information to trade unions and time off for trade union duties. Other trade disputes may voluntarily be referred to CAC but few cases have, so far, been dealt with in this way.

Employment Appeal Tribunal

This tribunal hears appeals – on points of law only – from industrial tribunals.

Because employment legislation is complex, and in some parts loosely defined, industrial tribunals sometimes differ in interpretation. The decisions of individual tribunals do not set a precedent (though other tribunals may take them into account). Decisions made by the Employment Appeal Tribunal (EAT) do. EAT therefore has an important role to develop consistency in the decisions of industrial tribunals.

It interprets the law in relation to the facts and produces an authoritative judgement which then becomes case law. Industrial tribunals must follow this precedent when dealing with similar facts. There are further possible rights of appeal to the Court of Appeal and the House of Lords on points of law from decisions by EAT.

Wages councils

Wages councils consist of equal numbers of members representing employers and workers, and three independent members, one of whom is the chairman. The independent members are appointed by, but not responsible to, the Secretary of State for Employment. The other members are appointed by employers' organisations and trade unions nominated by the Secretary of State.

The powers of wages councils were curtailed under the Wages Act 1986. An order made by a council may now only fix:

- a basic rate of pay
- an overtime rate, together with the number of hours to be worked before the overtime rate becomes payable
- a maximum amount that can be deducted for living accommodation.

Employees under 21 years of age are excluded from the provisions of wages council orders.

Although wages councils can no longer set other terms or conditions, such as holiday entitlement and spreadover payments, employees may have contractual rights. This could be the case, for example, where employment commenced before the Wages Act changed the powers of wages councils.

The wages councils involved in the hotel and catering industry are:

- Licensed Non-Residential Establishments (LNR) – covering public houses and non-residential clubs
- Unlicensed Place of Refreshment (UPR) – covering unlicensed restaurants, cafés and snack bars
- Licensed Residential Establishment and Licensed Restaurant (LR) – covering licensed hotels and residential clubs (with four or more bedrooms) and licensed restaurants.

The scope provisions of the councils are complex and the relevant wages order should therefore be consulted to determine the actual coverage

Unlicensed hotels and guesthouses, and licensed hotels or guesthouses with fewer than four bedrooms, are not covered by a wages council.

The process of agreeing and producing a new wages council order can be initiated by a proposal from either the workers' or the employers' side. In the example overleaf the proposal is made by the workers' side.

When initially set up, nearly 50 years ago, the catering wages councils were seen as an interim step to regulate terms of employment pending the development of fuller collective bargaining between the parties.

The Secretary of State for Employment has the power to abolish or vary the scope of wages councils. At the time this edition was being prepared, a consultation document issued by the Department of Employment made a strong case for abolition. It pointed out that a system of national statutory rates of pay was inconsistent with the need for flexibility.

Agreeing and producing a new wages council order

1. Demands for improvements in pay are voiced and approved by union members at union branch meetings, trade conferences and annual delegate meetings.
2. The claim is then formulated in consultation, where appropriate, with the unions represented on the workers' side of the wages council.
3. The employers' side considers its situation and prepares its case.
4. Carefully prepared statements in support of and against the proposal are presented by each side, generally in advance of the meeting of the wages council.
5. Following the reply from the employers' side the two sides retire to separate rooms to consider their positions. Arguments and counter arguments are made to the chairman, who acts rather like a conciliator. When appropriate, the two sides meet again and settlement may be reached by agreement between the two sides. If the sides cannot agree, the rival proposals are carried to a vote of the council where the independent members can give a casting vote. If they vote for the proposal of the workers' side it succeeds; if they support the employers' side the workers' proposal fails and that of the employer succeeds.
6. Notice of Proposal as decided by the council is then circulated to the trade in scope of the council and has to be posted up in every establishment to allow for possible representation by workers, employers or other interested parties within a specified period. Any representations to the published proposal are later considered by the council which can either modify or confirm the original proposal.
7. The order is published by the office of the wages council.
8. A copy of the order must be posted in every establishment affected in the trade concerned. Its terms become operative from the date fixed by the wages council and must be observed as a minimum by *every employer within scope of the order*.
9. Employers observing less than the minimum terms laid down can be taken to court and legally forced to comply through prosecution by the wages inspectorate.

The HCTC, colleges and professional associations

Other organisations play an indirect role in employee relations. The colleges, polytechnics and universities who offer hotel and catering courses, the Hotel and Catering Training Company, the Hotel, Catering and Institutional Management Association (HCIMA), the British Institute of Innkeeping (BII) and other professional and personnel associations are important providers of advice, education and training and increasingly influence the type of employee relations education given to qualified staff entering the industry.

Trade unions

The main aim of a trade union is to represent and advance the interests of its members. In the hotel and catering

industry trade union membership levels are unevenly spread and generally low in comparison with other sectors of the economy. Levels of union membership are higher in some sectors, such as industrial catering, where the catering staff frequently belong to the union representing the other employees of the concern.

The unions mainly involved in the industry are:

- the Hotel and Catering Union, part of the General, Municipal and Boilermakers' Union (GMB)
- Transport and General Workers' Union (TGWU) – particularly active in London hotels and in the leisure and tourism industry
- Union of Shop, Distributive and Allied Workers (USDAW) which has members in industrial catering and in restaurants in department stores
- National Association of Licensed House Managers (NALHM)
- Rail, Maritime and Transport Union (Hotels Department), previously the National Union of Hotel and Catering Employees, which was part of the National Union of Railwaymen
- National Union of Public Employees (NUPE).

To avoid inter-union disputes over membership, and the waste of resources, an informal 'spheres of influence' agreement exists in some sectors of the industry, whereby the unions active in the industry have agreed the companies with which each union will seek to deal. If inter-union membership disputes should arise, the Trades Union Congress, to which most unions belong, operates a mechanism (the Bridlington Agreement) to resolve them.

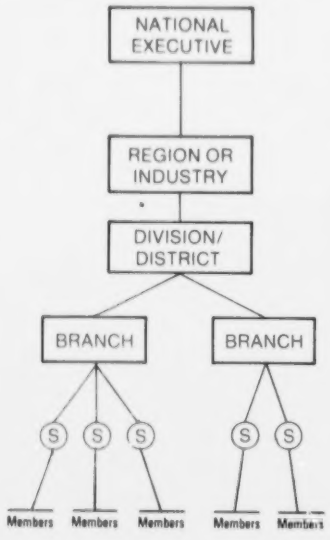
The TUC also plays a part by the maintenance of its own Hotel, Catering and Tourism Committee, which meets regularly to co-ordinate developments and resolve union problems.

Though individual unions differ in their structure, the usual organisation of union structure is shown overleaf.

Locally, union officials from different unions meet regularly at Trade Councils. On a national level, most large independent unions are affiliated to the TUC.

The policy-making body of the unions is the annual conference, which draws delegates principally from branch and district level.

Trade union organisation



Often full-time and paid; administers the union and provides centralised services, for example legal, training, research; also deals with issues not resolved locally or regionally, responsible to the delegate conference

At this level union organisation differs between union and industry. District/ regional officers are full-time and paid. They deal with the geographical area or activity for which they have been appointed

Members and staff representatives meet regularly at local branch meetings. Branch officers are unpaid and work part-time

Staff representatives or shop-stewards, elected by staff, generally unpaid

Employees who are union members. Each member is assigned to a branch whose meetings he or she may attend and at which he or she can vote

How members influence union policy

Members' views are formulated locally and resolutions passed at branch level

They are then dealt with and, if appropriate, passed on to division/district/region

If necessary they are debated and can influence and formulate union policy at the delegate conference

The delegate conference generally meets annually, to consider a report on the year's work and to formulate future policy. Each branch elects at least one delegate to the meeting. Majority decisions of the conference are binding on members, branches, full-time officials, and the union executive

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3 Ideologies and motives

Employee relations is concerned not only with relationships between individuals and institutions, but also with the assumptions and ideas on which these relationships are based.

For example, one commonly held view of employee relations is that the different parties in industry have aims that are in many respects divergent or even conflicting. This 'pluralistic' view holds that such aims, though moderated in practice, mean that the purpose of employee relations has to be to manage and reduce inherent conflict.

An alternative view is that all involved in industry operate as a team, having as their ultimate common goal the success of industry, and that employee relations is about the development of practices to meet this common goal – the so-called 'unitary' approach. Both these sets of extreme views can be firmly and sincerely held; neither can be said to be 'right' or 'wrong'. But individuals holding these differing preconceptions will obviously take different approaches in employee relations matters.

Whatever their judgement about these differing views, managers, staff and union representatives need to be aware, in order to operate effectively, that:

- people's actions are determined partly by their ideals and aspirations
- such ideals vary greatly
- we need to understand other people's views as well as our own in forming judgements and making decisions.

In all but the smallest companies it is useful to have some systematic way of representing employee attitudes and opinions to management – relying on individual contact and consultation is not always possible. This is particularly true when employees' interests clash with those of management – often only some form of third party representation can ensure that justice is seen to be done.

Most problems can be raised and resolved locally within individual organisations. It is normally better for issues to be handled in this way, where management and employee

representatives have been able to build up trust and knowledge of each other and fully understand the problems.

Characteristics of employee relations in the hotel and catering industry

Observers of the industry have indicated a number of ways in which the management of employee relations in the hotel and catering industry is affected:

- there is much seasonal and part-time work – the demand for the industry's services often being seasonal or erratic and fluctuating
- many foreign workers, often with a poor command of English, are employed
- individual units are relatively small and widespread, even when belonging to a large organisation, so that control and monitoring of employment practices is difficult
- relatively few employees belong to trade unions
- a number of trade unions have interests in the industry
- some employers have reservations about the wisdom of encouraging staff to join unions, feeling that it cannot be beneficial to the unique style necessary for the success of individual enterprises
- the close 'personal' relationship between staff and the customers they serve also affects the management–staff relationship
- there is a preponderance of female employees who have no tradition of trade union membership
- a high incidence of entrepreneurs operate in the industry
- the development of a professional personnel function in most organisations
- there is an absence of employers' associations in the industry
- labour turnover, which is often extremely high and potentially disruptive, is still accepted as normal by some managers and staff
- often neither staff nor management have experience of formalised systematic employee relations procedures.

It is difficult to evaluate to what extent these general assertions are true, particularly in an industry so large and diverse. There is no doubt, however, that the industry is different from many others in its great potential for job satisfaction. Many catering jobs provide satisfying contact with the customer and allow individual flair and creativity. Staff usually have close and frequent contact with their manager or supervisor, unlike the 'anonymous' nature of

some factory or office situations. While these positive factors are being built on and developed, there is also, in common with other industries:

- an obligation to implement current employment legislation
- a need to recognise that long-term changes in social attitude are backing up the demands, by staff, for greater involvement in the running of the business
- the increasing cost of labour and other continuing financial and market pressures
- recruitment difficulties, the increasing cost of labour and other financial and market pressures.

4 Developing effective employment practices

It is important that the employer's policies and procedures are known and properly understood by staff, and updated as necessary. And if an organisation has thought through the way in which it plans to deal with its staff, successfully communicated this to staff, and provided them with a clear statement on the standards it expects, many potential problems can be avoided.

The following approaches will help:

- effective induction training
- training of those required to implement policy
- use of a staff handbook
- regular consultation and meetings with staff to clarify queries and resolve difficulties
- checking on the effectiveness of communication with members of staff from ethnic minority groups.

See Appendix II for sources of help on particular ACAS

The following chapters give an introduction to sound employment practice. Many of those mentioned have been in use by successful employers for some time – they are not theoretical concepts, but well proven techniques. Legislation has given employees considerable rights, and in any case labour turnover is expensive and disruptive. So, when in doubt about a matter concerning employees, don't take a chance, seek advice.

The checklist below covers many of those matters about which it is useful for an employer to have a considered employee relations policy.

Checklist Developing an employee relations policy

Recruitment

1 What steps have you taken to produce an 'Equal Opportunity' employment policy statement?

2 Do you select on merit – regardless of sex or race?

3 Do you know that the Commission for Racial Equality and the Equal Opportunities Commission can help by giving examples of equal opportunity policies and advice on how to monitor their use? (See Chapter 9.)

Pay and other benefits

4 Do you plan your pay policy?

5 Do you *plan* to be a 'low' or a 'high' payer?

6 Do you know what benefits your competitors offer? (See Chapter 7.)

7 Is your pay structure planned and understood, or based on 'grace and favour'?

8 Do you understand and comply with current wages council orders and with the provisions of the Equal Pay Act?

Staff representation

9 What is your declared approach to staff representation?

10 Do you, where appropriate, recognise and negotiate with a trade union?

11 Do you make adequate facilities available for the representatives of your staff?

12 If you do not recognise a trade union, do your staff have adequate opportunities to represent their views?

Communication and consultation

People are often so busy that they can easily be unaware of what other working groups are doing or what problems there may be.

13 What do you do to find out about these problems and to help resolve them?

14 How do you consult staff on changes that will affect them and how do you gain commitment to new policies? (See Chapter 13.)

Staff development and training

15 What initiatives have you taken to develop and train your staff, especially young people?

16 Do you have a policy about promotion from within the organisation and do you seek to develop staff by an effective appraisal scheme? (See Chapter 11.)

17 Do you select staff for training and development on the basis of merit and their needs – regardless of sex or race?

Disciplinary matters and grievances

18 Do you have adequate, readily understood procedures that are available for all to see?

19 How are these communicated? (See Chapter 14.)

Retirement

20 At what age do you normally retire staff?

21 How do you decide who is to retire and who can stay?

22 Are your staff aware of the policy and are they clear on whether you have a defined age for retirement?

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Redundancy or lay off

23 In what circumstances will staff be made redundant or laid off?

24 What systems of notification, consultation and selection will be used? (Remember that you are obliged to consult the relevant recognised trade union if one exists, and that race and sex discrimination legislation also applies to decisions about redundancy selection.)

25 Are alternatives such as work sharing or short time, built into your procedures? (See guarantee payments in Chapter 7, also Chapter 16.)

Finally

Considering your employment policies in general – have they been discussed with your staff?

Even if they do not belong to a trade union, it is preferable to discuss and agree on such matters with staff or their representatives, before making rules.

5 Recruitment and selection

Even when unemployment figures in Great Britain rose above three million, many hotel and catering employers found difficulty in recruiting sufficient staff of the required calibre. The declining level of unemployment is making the problem more acute. The reduction in the number of school-leavers during the 1990s, the 'demographic time bomb', has highlighted a further factor in staff shortage. In fact, the reduction of one and a third million people under the age of 25 will be more than made up by an increase of two and a third million people aged between 25 and 54. By the year 2000, one employee in three will be aged over 40 years. So there will be a larger, but ageing workforce. More than 90 per cent of the increase in the 1990s is expected to be made up of women, who will comprise nearly half the total workforce.

The completion of the Single European Market brings new challenges. People will have more opportunities to work in other European countries, where salaries are generally higher than in Great Britain. Other factors can make employment more attractive, ranging from climate, the perceived status of working in the industry in other countries, and the provision of facilities.

Early in 1990, a European work experience project was launched to bring together schools, colleges, educational authorities and companies in this country and in the rest of Europe. Its aim is to provide reciprocal work experience for post-16-year-old people. At the same time, a report was published in which exchanges between European vocational training establishments, for students and staff, were seen as a vital component of education and training in the EC.

A research project undertaken by the Institute of Personnel Management reinforced the need for companies to include caring policies towards their employees as well as their customers. The relationship between work and personal life must be recognised. While this does not call for a paternalistic approach, employees should be able to decide how they can meet the demands of their work.

What this means to recruitment of staff is that flexibility answers at least some problems. Traditional ways of

defining jobs, and of deciding how they should be filled may need to be rethought. Here are some ideas to consider:

- career break schemes. Only seven per cent of women return to work full-time immediately after the birth of a child, but 90 per cent return after a longer period. Some companies allow a break of up to five years, or two breaks of shorter duration, after which the employee can return without loss of seniority. Sometimes women are required to return for perhaps two weeks each year during the break. Clearly this sort of scheme could be difficult in a small company
- sabbaticals. These may be granted for a variety of purposes, including family commitments, such as looking after a sick relative or visiting relations abroad
- v-time (voluntary reduced time). This allows full-time employees to reduce their working hours for an agreed period. Their pay is also reduced, but their employee benefits are maintained, often on a pro-rata basis. Possible purposes include ill health, allowing parents time off during school holidays, and enabling employees to gain new skills or qualifications
- women returners. One of the greatest successes of the Employment Training programme has been the number of women who have been encouraged to return to work, often after a gap of several years. Many have been worried about how they will cope with work after being away, and their time on ET has helped them to regain their confidence
- greater provision of part-time work, even for higher level jobs. Possibilities include job-sharing, and term time contracts for parents
- care arrangements. The provision of crèches is not yet widespread, and its drawbacks include transporting the children and finding suitably qualified child-minders. Furthermore, in addition to child care, consideration may also need to be given to how best employees can care for elderly parents and dependants with disabilities
- mature entrants. At present, no one has legal protection against age discrimination. Some major companies actively recruit older workers – the benefits in hiring the mature include reliability, greater experience and more practised skills in dealing with customers
- work experience. Schools and colleges are striving to make closer links with industry and commerce, and most include periods of work experience in their curriculum
- ethnic minorities. Make links with local ethnic minority groups, consider placing job advertisements in the ethnic

minority press and avoid informal methods of recruitment such as word of mouth which are likely to continue the predominance of one racial group. If ethnic minorities are not applying for jobs, or not being promoted within the establishment, take action to put the situation right, for example providing language training for those who need it and monitoring the ethnic origin of applicants at each stage of the recruitment process.

Efforts to recruit suitable staff can be made in vain if they leave within a short time. Staff turnover in the hotel and catering industry is high compared to other industries. Research confirms the generally held belief that staff turnover is highest in the first few months of employment. This is particularly true of the commercial sector where nearly 45 per cent of all new workers in hotels and guesthouses were found to have left within the first three months. Fifteen per cent left within the first month.

Such turnover is costly and emphasises the seriousness of staff recruitment. A manager should decide:

- is the job really necessary? Can other jobs be reorganised or reallocated to eliminate this post? Why did the previous employee leave – are there changes that should be made to the job or supervision? Exit interviews of staff can yield useful information
- is it necessary to recruit outside the organisation? Why not capitalise on the skills already in the organisation by promoting or moving an existing member of staff?
- what actually is the job? What demands does it make on the person holding it? What personality, qualifications, skill and knowledge are needed? A job analysis – using a simple form – will clarify the demands made by the job and thus the type of person needed to fill it
- how should the new staff be recruited? There are many more ways of staff recruitment than putting an advertisement in the newspaper or contacting the local Jobcentre. Different methods and styles should be used and their effectiveness and economy checked. An imaginative approach to recruitment and advertising will attract better quality recruits – important even when staff are easy to come by
- where will the applicants come from? Try to get to know the labour market. Many managers believe that they have to attract their staff from among those working at other hotels and restaurants. But in one survey over 50 per cent of hotel staff interviewed had previously worked *outside* the industry – so the placing of advertisements (and the subsequent training of new staff) might need to

be re-thought. Some employers have carried out successful local recruitment campaigns in areas well served by direct transport links giving easy access to the business, rather than by general 'blanket' advertising, or provide transport to and from residential areas.

The right person should be selected carefully. Many people think of themselves as good interviewers, just as they believe themselves to be good car drivers – possibly neither is correct! In fact, selection interviews are well known to be unreliable and while, for a variety of reasons, they will always be widely used, it is necessary to plan a careful interview. The checklist below sets down a sound approach.

The HCTC self-study unit *Getting the Right Staff* provides helpful guidance

The interview can be supplemented with information on the candidates from other sources, such as application forms, references, aptitude and trainability tests. Training can help develop interviewing skills.

Errors in selection are expensive and difficult to rectify, so it is important to:

- be clear about the sort of person being sought
- be aware of the limitations of interview techniques
- consider the use of other techniques – references, application forms, trainability or selection tests, additional interviews by colleagues – to supplement interviews
- make sure that whatever process of selection is used, it does not discriminate unreasonably against any particular race or sex.

Checklist Interviewing

	Before the interview
1	Draw up a specification of the person sought: experience/ qualifications/education/personality/personal attributes
2	Plan the interview pattern and timetable
3	Ensure there will be no interruptions
4	Brief others involved
	During the interview
5	Put the interviewee at ease
6	Avoid 'leading questions'
7	Avoid trick questions
8	Ask open ended questions
9	Probe answers if necessary
10	Don't be afraid of silence

11 Listen more than you talk.

12 Make notes as necessary.

13 Stick to your timetable.

14 Tell the interviewee when the decision will be made.

After the interview

15 Make a decision.

16 Take up references.

17 Advise interviewees of results.

18 Keep a record of unsuccessful candidates and reason for rejection.

19 Plan training, especially induction.

20 Check progress after appointment.

Work permits

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Foreign, non-EC employees need a valid work permit to work in the UK. Until 1993 permits are also required for Portuguese and Spanish nationals. The employer should apply to the Department of Employment and allow at least eight weeks. Permits are issued for a *named overseas worker* and for a *specific job*, and last for no longer than 12 months, though they can be renewed.

Only workers between 23 and 54 years of age are eligible for permits, and the permit will be issued only if no suitable resident labour is available to fill the post concerned. Permits are available for highly skilled and experienced workers to fill senior posts in hotel and catering establishments and who have had five years in a skilled capacity, including at least two years in a supervisory position. If the worker has successfully completed an appropriate full-time training course of at least two years' duration at an approved hotel or catering school abroad, this may be allowed to count towards the five years' experience.

The Department of Employment leaflet OW5 gives further details

There is a special quota of work permits for unskilled and semi-skilled workers from Dependent Territories such as Bermuda and Gibraltar.

Work permits are available for on-job training or work experience purposes. Those for whom applications are made will normally have completed an appropriate training course of at least two years' duration before coming. This arrangement is intended to benefit developing countries and their citizens. The training must be for a limited period, as far as possible agreed in advance and extension of approval beyond one year will be given only if satisfactory performance is being maintained.

Approval may also be given for employment for up to a year in a supernumerary capacity for people wishing to come to

Great Britain to widen their occupational experience, or to improve their English.

The Department of Employment leaflet OW21 gives further details

Before moving from the job for which a permit was issued, the holder must obtain the consent of the Department of Employment.

Overseas students attending courses in the UK who seek part-time work also need a work permit. Employers will need to show that no suitable resident labour is available, and that the wages and conditions are not less favourable than those generally offered in the area for similar work. Students must produce evidence from their educational establishment that the employment will not interfere with their studies.

Some foreign nationals will have had employment restrictions lifted. They should be asked to produce evidence in support, such as a letter from the Home Office, or an endorsed Certificate of Registration.

It is wise to ask your local Employment Office for guidance if you are in any doubt about employing a foreign national.

Late in 1989, the Department of Employment issued a consultative paper on possible changes to the work permit scheme. Suggestions included more relaxed controls, a reduction in bureaucracy, and permits to be issued for four years rather than one.

Sex and race discrimination

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It is illegal to discriminate against an applicant on grounds of sex or marriage, except where sex is a *genuine occupational qualification*. Remember that the legislation intends to ensure that the applicant selected is the person, of either sex, who is most capable of doing the job.

It is also illegal to discriminate against an applicant on the grounds of race or ethnic origin – except where race is a genuine occupational qualification (Race Relations Act 1976).

The forms of sex or race discrimination are:

- *direct* discrimination – when a person is treated less favourably than another, because of sex, race, or marital status
- *indirect* discrimination – applying, in any circumstances covered by the Sex Discrimination or Race Relations Acts, a requirement or condition which, although applied equally to persons of either sex or all racial groups, is such that a considerably smaller proportion of one sex or a particular racial group can comply with it and that it cannot be shown to be justifiable on grounds other than race or sex.

Genuine occupational qualification (GOQ) is a term used to describe a situation in which the requirements of a job are such that only a member of a particular sex or race can effectively carry out the job. For example being of a particular racial group might be a GOQ for waiting in an ethnic restaurant

Allegations of sex or race discrimination in employment matters are dealt with by industrial tribunals. ACAS will attempt conciliation prior to the tribunal hearing. The normal time limit for making a complaint is within three months of the act complained of and there is no qualifying period of employment.

Two codes of practice have been published and approved by Parliament. They are obtainable from HMSO or through booksellers. Breaches of the codes are not in themselves actionable, but may be admitted in evidence before an industrial tribunal. Both codes acknowledge a degree of informality in small businesses, so that in some cases it would be unreasonable to expect all the detailed recommendations to be carried out.

The Equal Opportunities Commission *Code of Practice for the Elimination of Discrimination on the Grounds of Sex and Marriage and the Promotion of Equality of Opportunity in Employment* is in two parts. The first covers the role of good employment practices in eliminating sex and marriage discrimination. The second covers the role of good employment practices in promoting equality of opportunity. Its recommendations include:

- the need for policy to be actively supported by top management
- the establishment, use and monitoring of consistent criteria for recruitment, selection, training, promotion, transfers, disciplinary and grievance procedures, redundancy and dismissal
- the policy to be clearly stated, and communicated to all employees and where practicable, job applicants
- trade unions to be involved in establishing, implementing and reviewing policies where appropriate.

See also Chapters 5 and 9

The Commission for Racial Equality *Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment* is in four parts covering the responsibilities of employers, individual employees, trade unions, and employment agencies. Its recommendations for employers include:

- the overall responsibility for policy to rest with a member of senior management
- the adoption, use and monitoring of an equal opportunities policy in recruitment, selection, training, promotion, transfers, disciplinary and grievance procedures, redundancy and dismissal
- the policy to be clearly communicated to all employees

- the policy to be discussed and agreed with trade unions or employee representatives where appropriate
- training to be provided for those who need to be aware of legislation and who have to apply company policy.

Disabled employees

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Firms employing 20 or more staff have a duty to employ a 'quota' of three per cent registered disabled people. In calculating staff numbers, employees working less than 10 hours per week are disregarded; between 10 and 30 hours per week count as one half unit; those over 30 hours as one unit.

The Disablement Advisory Service provides practical advice and guidance on the employment of disabled people, including the specialised help that is available. For example, financial assistance can be given for adaptions to employers' premises, and practical aids to employment can be loaned to disabled employees.

The Disablement Advisory Service can be contacted through Jobcentres and Employment Offices

The code is available free of charge from the Disablement Advisory Service. Videos to help with the practical aspects of employing people with disabilities are also available and the HCTC self study units in the *Personnel Management* module include advice on this subject

The *Code of Practice on the Employment of Disabled People*, published in 1984, sets out the principal legal requirements regarding the employment of disabled people, and gives advice on formulating a policy. Other sections cover categories of disablement, matters concerning recruitment, aspects to consider during employment, and assistance for employees who become disabled. Sources of financial and practical help are listed, together with information about particular disabilities and specialist organisations.

Every director's report of a company employing more than 250 people must contain a statement concerning the disabled. The statement will describe the policy that has been applied during the year relating to applications for employment, continuation of employment and appropriate training for those who have become disabled, and opportunities given for training, career development and promotion.

The Rehabilitation of Offenders Act 1974

This Act enables ex-offenders to 'live down' their past and make a new start. The Act specifies that if any offender is not convicted again during a specified 'rehabilitation' period, his or her conviction becomes 'spent'. The length of the rehabilitation period varies from six months to ten years and only relatively short sentences can be 'spent' in this way.

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Under the Act, a spent conviction, or failure to disclose a spent conviction, is not a proper ground for dismissing a person or handicapping someone in any way in any occupation or employment. You must not, for example, mention spent convictions in references you may be asked to provide or you will risk a charge of defamation of character.

Children and young people

Restrictions on the employment of children (those below the minimum school leaving age) are laid down in the Children and Young Persons Act 1933 as amended by the Children and Young Persons Act 1963 and the Children Act 1972. They provide that no child shall be employed:

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- under the age of 13 years
- before the close of school hours on any day on which the child is required to attend school
- before 7 am or after 7 pm on any day
- for more than two hours on any day on which the child is required to attend school
- for more than two hours on any Sunday
- to lift, carry or move anything so heavy as to be likely to cause injury.

These restrictions may be made more rigorous by local by-laws. In particular the age below which children are not to be employed can be increased and the employment of children in any specified occupation can be prohibited.

Restrictions on the hours of work of young people (those between school leaving age and 18 years of age) were lifted in the Employment Act 1989.

Government training programmes

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The most widely known government training programme, the Youth Training Scheme (YTS), was launched in 1983 as a one-year programme of planned on-the-job training and work experience, supported by off-the-job training or education. In 1986, YTS was developed into a two-year programme which included at least 20 weeks off-job training.

Businesses and trainees soon recognised the benefits of YTS. Both sides were offered the chance to see how they suited each other if eventual employment was a possibility, and young people were able to develop through all aspects of their progamme.

Government sponsored training programmes will continue to develop over the years. Information on the current programmes can be obtained from the TEC or LEC for the area, the Careers Office or Department of Employment, or the Hotel and Catering Training Company which is the principal approved training organisation for YT in the hotel and catering industry

Employment Training (ET) was launched in 1988 to provide opportunities in particular for the long-term unemployed and returners to work.

Training and Enterprise Councils (TECs) were established throughout England and Wales in 1990/91. There are over 80 TECs, each covering a geographical area. Each TEC has a board of between 9 and 15 people. Two-thirds of members of the board are executives from local industry and commerce, and the remainder represent community interests. A TEC's remit is to make an assessment of its area's employment and training needs and to allocate

resources to meet the needs. Responsibility for operating government training programmes is devolved to TECs, within national guidelines. Detailed arrangements for Welsh TECs and the 20 or so Scottish Local Enterprise Companies (LECs) differ slightly.

In 1990 YTS became Youth Training (YT), with greater flexibility. Delayed entry is available for some people above the age of 18. The duration of training depends on the type of training and individual needs, but all young people have a right to training that will enable them to achieve at least one level two national vocational qualification.

ET also has greater flexibility. While rules on eligibility remain, TECs and LECs have freedom to decide on the split between on-the-job and directed training, which is usually carried out off-job. There will be less emphasis on achieving a qualification than in YT.

6 Engagement

Having recruited and selected the right staff, it is important to ensure that in the interests of the law, the employer, and the new members of staff, that employees have a simple and clear guide as to the terms and conditions of their employment.

The individual contract of employment is the keystone of the employer–employee relation in law. Once the person who has been selected accepts the job, for the terms offered, the contract is complete. But if there is a dispute later and nothing has been put in writing, it may be difficult to prove the terms of the contract.

The provisions of the Contracts of Employment Act 1963 are now covered by the Employment Protection (Consolidation) Act 1978, Section 1. Amendments have been introduced in the Employment Acts 1980, 1982 and 1988.

Written statement

Within 13 weeks of commencing work with an employer, staff working 16 hours a week or more are entitled by law to a *written statement of terms and conditions of employment.*

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Staff working eight hours or more a week are legally entitled to such a statement only after five years' service, but it is sensible to clarify the situation by providing them with a statement at an early date.

The statutory written statement must contain:

- names of employer and employee
- job title (to preserve flexibility it may be useful to add 'and other duties normally associated with this position' to the title)
- date of commencement and the date the employee's period of continuous employment began (taking into account whether any employment with a previous employer counts towards that period). If the employment is for a fixed term, the expiry date must be given
- scale of remuneration or method of calculating remuneration

- intervals at which remuneration is paid (such as monthly, weekly)
- any terms and conditions relating to hours of work (including normal working hours)
- terms and conditions relating to holidays and holiday pay, incapacity for work due to sickness/injury, sick pay arrangements, pensions and pension schemes (state whether a contracting-out certificate under the Social Security Pensions Act 1975 is in force for the employment in question)

Further information on disciplinary rules, procedures, and grievances is given in Chapter 14

- disciplinary and grievance information comprising a note of any disciplinary rules affecting the employee, and a person to whom the employee can apply if dissatisfied with any disciplinary decision. The name or job title of a person to whom the employee can take any job grievance must be shown in all cases. If the employer operates a disciplinary or grievance procedure that goes beyond the identification of the person, details of the procedure must be given. Under the Employment Act 1989, employers with fewer than 20 employees do not have to provide details of disciplinary rules or procedures
- any previous service that counts for continuity purposes and when continuity began
- the length of notice which the employee is obliged to give and entitled to receive to terminate his or her contract of employment (minimum statutory periods of notice have been set, see page 94).

An example of such a written statement is shown opposite.

In addition to the above information, which an employer is legally *obliged* to specify, it is important to decide whether to include other matters relating to the business.

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Matters commonly giving rise to misunderstanding, and which should therefore be made as clear as possible, include:

- conditions under which accommodation or other benefits such as meals or uniform are supplied, and whether accommodation must be vacated when employment ceases
- terms of joint (husband and wife) contracts
- company right to search employees
- deductions from wages. The only deductions for which an employer has an absolute right are national insurance contributions and PAYE, or where a court has made an attachment of earnings order. Under the Wages Act 1986, employers must not make any other deduction from an employee's pay unless it is a relevant provision of the

employee's contract, or the employee has previously given written permission for the deduction to be made

- right to suspend employees and whether this is to be with or without pay (see Appendix IV, para 12c)
- responsibility as to safety
- continuity of employment (especially for seasonal or casual staff)
- maternity rights (see Chapter 8)
- requirement to undertake overtime working.

It is important to *check* whether staff understand what they have been told about the rules and procedures, especially those staff who may have language difficulties. In particular, check that they understand:

- whom they should approach to resolve problems
- disciplinary rules
- grievance procedure
- safety/fire/hygiene rules.

Written statements required by the Employment Protection (Consolidation) Act 1978, as amended by the Employment Acts 1980, 1982 and 1988

Introduction

Part I of this statement sets out particulars of the terms and conditions on which I . . . (*name of employer*) . . . am employing you . . . (*name of employee*) . . . at . . . (*date on which statement is issued*).

Part II of this statement sets out information on disciplinary rules, whom you should contact if you wish to appeal against a disciplinary decision or to take up a grievance, and the subsequent steps to be followed in the disciplinary and grievance procedures.

Your employment with me began on . . . (*date*). Your previous employment with . . . (*name of previous employer or employers*) . . . counts as part of your continuous period of employment which therefore began on . . . (*date continuous period of employment commenced*).

Alternatively

Your employment with me began on . . . (*date*). Your employment with your previous employer does not count as part of your continuous period of employment.

PART I

1 You are employed as a . . . (*insert job title*).

2 Scale or rate of remuneration, or method of calculating remuneration and the intervals at which remuneration is to be paid . . . (*give details*).

3 Normal hours of work and any other terms and conditions relating to hours of work . . . (*give details*).

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This example shows a possible format, which should be changed or amplified as necessary

4 Holidays and holiday pay . . . (*give details*).

5 Terms and conditions relating to incapacity for work due to sickness or injury and sick pay (*if none, say so*) . . . (*give details*).

6 Pensions and pension schemes (*if none, say so*) . . . (*give details*) . . . (*also state whether a contracting-out certificate under the Social Security Pensions Act 1975 is in force*).

7 Amount of notice of termination to be given by:
(a) The employee . . . (*give details*).
(b) The employer . . . (*give details*).

(*If the contract is for a fixed term no period of notice should be given but the date on which the fixed term expires should be stated.*)

PART II

1 The disciplinary rules which apply to you in your employment are . . . (*explain them*).

Alternatively

1 The disciplinary rules which apply to you in your employment can be found in . . . (*here reference should be made to a handbook or other document which is given to the employee with the written statement and additional note, or, if that is not practicable, can be read by the employee in a place to which access can be gained without difficulty*).

2 If you are dissatisfied with any disciplinary decision which affects you, you should appeal in the first instance to . . . (*give the name of the person to whom the appeal should be made, or the position held, for example, supervisor*).

3 You should make your appeal by . . . (*explain how appeal should be made*).

Alternatively

3 The way in which appeals should be made is explained in . . . (*refer to an accompanying handbook or a document which is reasonably accessible to the employee*).

4 If you have a grievance about your employment you should apply in the first instance to . . . (*give the name of the person with whom the grievance should be raised or the position held, for example, personnel officer*).

5 You should explain your grievance by . . . (*explain how grievances are to be raised*).

Alternatively

5 The way in which grievances should be raised is explained in . . . (*refer again to an accompanying handbook or, if necessary, to a document which the employee can consult which is reasonably accessible*).

6 Subsequent steps in the firm's disciplinary and grievance procedures are . . . (*explain them*).

Alternatively

6 Details of the firm's disciplinary and grievance procedures are set out in . . . *(refer to an accompanying handbook or, if necessary, another document which is reasonably accessible to the employee).*

Note that the separate stages outlined in Part II can be telescoped where, for example, the same person is the first to be approached for appeals against disciplinary decisions and grievances, or where the method of application for both is the same.

Keeping the written statement up-to-date

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If there is a change in any terms of employment the employer must *inform* the employee about it, no more than one month after its introduction, by means of a further written statement. Other documents such as pension booklets and rule books may be used as reference sources to back up the written statement. If these documents are amended, it is not necessary to send a further written statement, so long as, in the original written statement referring to the documents, there is an undertaking to keep them up-to-date (within one month of each change).

Do not forget that, once agreed, the terms of a contract of employment should not be changed without the consent of both parties. Some contracts have a built-in degree of flexibility (for example, mobility clauses or pay rates based on national agreements). In general, however, if a change in the terms of an employment contract is necessary, it is sensible to consult and agree the change with staff beforehand, rather than attempt to impose a change unilaterally, thus risking a claim for constructive dismissal.

When issuing a statement of terms and conditions of employment, employers can ask an employee to sign to acknowledge receipt of the document. This useful practice avoids possible disputes about whether particular information was or was not given at the start of employment. The employee does not *have* to sign – in this case a record should be kept to show that the document was handed over.

See also Appendix I and Chapter 17

Finally, note that if there is a change of employer in a business, staff must be issued with a new and full written statement within 13 weeks of a change. However, if the identity of the employer is unchanged but the name is changed, or if continuity of employment is otherwise preserved, the employer need only notify employees, in writing, within a month, of the change of identity or new name, specifying the date on which the employee's continuous term of employment began.

Part-time, seasonal and temporary staff

The hotel and catering industry employs many part-time and seasonal staff. Staff contracted to work 16 hours or more a week, or eight hours a week after five years with an employer, are entitled to most of the protection and benefits (notice, ability to claim unfair dismissal after a period of employment and so forth) once given only to full-time staff.

It is good practice to provide terms of employment, benefits, facilities, and services to part-time and casual staff on a pro-rata basis to full-time employees.

The European Court of Justice has ruled that a West German employer who did not pay statutory sick pay to a woman who normally worked 10 hours a week was guilty of indirect discrimination. It argued that a greater number of women work part-time compared to men. About 85 per cent of part-time workers in the UK are female. The possible consequences of this decision are far reaching, as other benefits, including redundancy pay and guarantee pay, are currently not paid to part-time workers.

It is likely that EC proposals will eventually lead to part-time workers being given the same rights as full-time employees.

Confusion may arise if staff are taken on as casuals or temporaries and subsequently, because of work needs, become full-time. Does their casual or part-time employment count towards establishing continuity? Particular difficulties can occur with permanent casuals who, in theory are taken on separately for each day's employment but may ultimately claim that *de facto* continuity of employment has built up.

Casually employed staff, whose employment has been on a near continuous basis, have made successful claims for unfair dismissal.

Seasonal staff may return. If the period of unemployment between the seasons is short, and the employee is re-engaged, the continuity of employment may be preserved during the period of absence due to the temporary cessation of work.

If in doubt, employers should consult a solicitor, ACAS, their trade association, or one of the other sources listed in Appendix II for help in drawing up the necessary standard letters

The key to avoiding trouble lies in proper discussion at the time of engagement or when conditions are changed, backed up by adequate documentation.

Other points about contracts

A contract of employment exists between an employer and employee once the latter has accepted an offer of employment from the employer; the fact that, at this stage, the contract is unwritten does not alter the fact that it exists, though it does make it more difficult to resolve disputes that may arise.

When and how induction can take place

When

Induction begins from the first contact any prospective new employee has with your organisation – first impressions are important. The main stages are:

when staff are being interviewed and appointed

the day they start

during and after the first few weeks.

How

Before joining by:

dealing courteously and efficiently with applicants for jobs

saying something about the company

explaining the type of work

showing recruits where they will be working

giving them details of conditions of work

introducing them to the person to whom they will be directly reporting

ensuring that they know where and when they start

giving them, where available, an employee handbook.

On the first day by:

welcoming and introducing

showing around

checking explanations already given about conditions of work

explaining main features of job standards, health and safety requirements and necessary procedures

introducing to someone who can answer queries and show the ropes

introducing to workers' representatives

going over employee handbook

explaining training.

During the first few weeks, by:

arranging attendance at a short induction course

using a checklist to see that further information and introduction are given as employee settles in

encouraging newcomers to find out some things for themselves

maintaining regular interest in how they are getting on

arranging follow-up interview with manager.

You will notice that much of this takes place only on the job, involving managers, supervisors and colleagues.

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L In addition, whatever the 'written statement' says, employers and employees have certain duties to one another, under common law.

An *employee* must:

- obey all lawful and reasonable orders
- not commit misconduct
- give faithful and honest service
- use reasonable skill and care in his or her work.

An *employer* must:

- take reasonable care for the employee's safety
- pay the agreed wages
- not require the employee to do unlawful acts
- provide work for workers paid by results or commission if work is available.

Helping new staff settle in

Labour turnover is high throughout the industry. It occurs especially within the first few weeks or months of employment. And the costs of recruiting and engaging a new member of staff are considerable – not only the direct costs like advertising, agency fees, paper-work, interview time, but the many hidden or indirect costs. For example, the expenses incurred in training and supervising new entrants, as well as those they are replacing, overtime that may have been paid during staff shortages, an increase in wastage and losses while new staff settle in, customer irritation and low staff morale if staff turnover is high.

Thus the first few weeks of employment are a vital period in the long-term retention of staff. An effective induction programme will help new staff settle into their new job as soon as possible, by familiarising them with:

- the job and its surroundings
- the people they will be working with
- essential information about the industry, the employer and their conditions of employment.

7 Pay policies and procedures

P **Labour is one of the major costs in the industry and one of the few variables that can be controlled over a short-term period. It is not easy to reduce the size of a restaurant, but it is normally possible to improve the productivity of the staff.**

Furthermore, the industry has a low pay image. To overcome this and attract a better quality staff, it is important that staff understand the value of the pay and their other benefits in kind such as meals and accommodation.

The following checklist offers a number of questions for employers.

Checklist Developing a pay policy

1 Is it appropriate to the size and type of establishment, and the calibre of staff employed?

Paying the statutory minimum may only allow the recruitment of low grade staff. Paying higher rates may enable an employer to operate with fewer staff, providing good service at the same total cost.

2 How are pay levels fixed?

Wages surveys can give accurate information on what other employers in the industry are paying, as well as what other employers may be offering *your* staff to attract them to another industry.

3 How are pay differentials decided?

Job evaluation techniques are useful in larger organisations where it can otherwise be difficult to establish fair differentials between groups of staff. Pay grievances often stem from staff who are dissatisfied with their earnings in comparison with others, and job evaluation is a fair and more acceptable way of establishing differentials. ACAS and the Industrial Society can provide assistance in job evaluation.

4 Does the pay system aim to reward effort by some form of bonus, or are other incentives such as profit sharing or merit rating used?

If such a system already exists, remember to check that it is still operating effectively.

5 Is it clear to staff exactly what 'perks' or fringe benefits they are entitled to?

The industry has its fair share of fiddles over money or goods, but dishonest practices of this sort do not bring about good relations with staff in the long term. Many employers have found that clarifying these matters has been helpful. On the other hand some feel that such matters cannot be dealt with by establishing procedures and policies. Account should also be taken of such factors as the cultural values of the staff and their particular relationship with management and customers.

6 Do staff really understand the pay and benefits they will receive?

7 Can the pay structure be simplified?

Misunderstanding breeds suspicion and lack of trust. Some organisations have complicated or unorthodox pay schemes that cause confusion. Matters which cause difficulty include:

- payment of a fixed cash sum 'in the hand'
- shift arrangements and pay rates
- distribution of tips or service charge.

Further information on different payment schemes will be found in ACAS Advisory Booklet No. 2 *An Introduction to Payment Systems*

Minimum wage

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Wages councils determine the minimum wages for many sectors of the hotel and catering industry (see Chapter 2) but, as various press and investigations by the wages council inspectorate have shown, some employers contravene wages council requirements by failing to display information on minimum rates of pay, or by paying below those rates. Employers who break the law in this way can be fined and required to pay arrears.

The Wages Act 1986

This Act superseded the Truck Acts of 1831 and 1887, and the Payment of Wages Act 1960.

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Workers no longer have the statutory right to be paid in 'the current coin of the realm'. But where a contract of employment existed before January 1, 1987, they may have a contractual right to be paid in cash.

Under the Wages Act, an employer can only make a deduction from an employee's wages if:

- it is required or permitted by a statutory or contractual provision, or
- the employee has previously given written permission for the deduction to be made.

The first ruling of the Employment Appeals Tribunal in a Wages Act case concerned an employee who had a week's wages withheld because he left his employment without giving a week's notice. The EAT upheld the industrial tribunal's decision that the deduction was unlawful, implying that the Wages Act covers deductions by non-payment as well as partial reduction of wages.

Itemised pay statement

Under the Employment Protection (Consolidation) Act 1978, employers must issue an itemised pay statement to all

employees who normally work 16 hours a week or more (or eight hours if they have five or more years' service). The statement must give the following details:

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- gross wages or salary
- amounts of any fixed deductions and the purposes for which they are made (such as contributions to National Savings Schemes authorised by the employee to be deducted from his or her pay). It is permissible for the employer to show only the aggregate amount provided the employee has been given a standing statement of fixed deductions. This statement must be renewed annually
- amounts of any variable deductions and the purposes for which they are made (such as income tax, national insurance)
- net wages or salary
- where different amounts of the net wage or salary are paid in different ways, the amount and method of payment of each part payment (such as wages paid weekly, distribution of bonus monthly).

The intention behind this requirement is that employees will understand how their pay is made up, and the purposes for their deductions.

For further information see the HMSO publication *The Attachment of Earnings Act 1971. Explanatory Booklet for Employers*

A Court may make an Attachment of Earnings Order, instructing an employer to make a deduction from the earnings of an employee who has defaulted on payment of a debt, fine or maintenance.

Guarantee payments

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The Employment Protection (Consolidation) Act 1978, as amended by the Employment Acts 1980 and 1982, states that an employee who works 16 hours a week or more, or 8–16 hours a week and has been continuously employed for at least five years is entitled to a guarantee payment if pay is lost because of short-time working or lay offs, provided:

The Act does not give employers the right to lay off staff. There is no such statutory right and the terms and conditions of an individual's contract of employment, whether written or not, must provide for such a circumstance

- a full day's work is lost
- the employee has completed one month's service
- the employee has not unreasonably refused an offer of suitable alternative work
- the short time or lay off does not result from a trade dispute involving any employee of the employer or an associated employer.

Further information is available in the Employment Legislation booklets, No 9 *Guarantee Payments* and No 11 *Rules Governing Continuous Employment and a Week's Pay* (DE)

Guarantee payments are limited to one day's pay (subject to a ceiling figure – £12.65 in 1990 – up to a maximum period of five workless days in any three month period, or the equivalent number of days per week normally worked by that employee).

Temporary employees taken on to work for up to three months are not eligible for guarantee payments.

Insolvency

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Further information is available in the No 3 booklet in the Employment Legislation series *Employee's Rights on Insolvency of Employer*

Under the insolvency provisions of the Employment Protection (Consolidation) Act 1978 and the Insolvency Act 1986, the Department of Employment may pay from the Redundancy Fund certain debts owed to employees by insolvent employers. These include arrears of pay (for one or more weeks up to a maximum of eight weeks), holiday pay (up to a maximum of six weeks) and a compensatory payment for the employer's failure to give the employee proper statutory notice. A financial limit is imposed on each debt (in 1990 £172 a week, this amount is revised from time to time).

Time off work

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Pregnant employees are also allowed time off with pay for antenatal care, see Chapter 8

For further information see the Health and Safety Commission's leaflet *Time off for the Training of Safety Representatives*. The ACAS Code of Practice No 3 gives more details on time off for trade union duties and activities

The Employment Protection (Consolidation) Act entitles employees to reasonable time off work *with pay* under certain circumstances:

- for officials of independent, recognised trade unions to carry out duties connected with industrial relations between the employer (and any associated employer) and the employees; and for TUC or union-approved industrial relations training (see ACAS Code of Practice No 3). Under the Employment Act 1989, this time off is limited to duties that are concerned with matters in respect of which the employer recognises the trade union, or with the performance of functions for which the union is not recognised, but which the employer has agreed the union may perform. Time off with pay for training is limited to training which is relevant to those duties
- an employee who is being made redundant is entitled to reasonable time off to look for work or to arrange training for a new job provided the employment has been continuous for at least two years
- for safety representatives (appointed by recognised trade unions) to perform their duties and undergo TUC-approved training.

Employees also have the right to *unpaid* time off work for the following purposes – but the employer may, of course, wish to pay them:

- for members of an independent recognised trade union to take part in that union's activities (other than industrial action)
- for public duties. Employees who are JPs, or are members of certain public bodies are entitled to reasonable time off to carry out necessary duties subject to the needs of the business. For example member of a local authority, or of any statutory tribunal, or a regional or district health

authority or health board, or the governing body, school or college council of an educational establishment maintained by a local education authority.

In deciding what is reasonable, account can be taken of how much time has already been allowed for public duties, or trade union duties or activities. In addition, the circumstances of the employer's business and the effect of the employee's absence on running the business, can be considered.

Medical suspension

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Section 19 of the Employment Protection (Consolidation) Act provides for an employee with one month's service or more, who has to be suspended from work under statutory regulations following examination by a member of the Employment Medical Advisory Service or an appointed doctor, to be entitled to be paid normal wages for the time of suspension up to a maximum of 26 weeks. This payment applies in certain situations where it would be injurious *to the health of the worker* for the employee to continue to work. The situations are clearly laid down in Schedule 1 to the Act as amended and include suspensions under the Control of Substances Hazardous to Health Regulations (COSHH) as well as suspension connected with lead smelting and radioactive substances.

This provision has made little impact on the hotel and catering industry, though both the Secretary of State for Employment and the Health and Safety Commission are empowered to extend the coverage by regulations or codes of practice.

Holiday pay

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In the UK there is no general statutory right to any paid holiday. Wages councils no longer have the power to set holiday entitlements. However, employees will usually have contractual rights to holidays. There has been a general trend towards longer holidays, together with pressure to reduce the length of the working week.

If staff request extended leave to visit friends or relatives overseas, make sure that the terms of such leave (how long, notification of delays, length of time a job is to be kept open) are clearly agreed, understood and preferably put in writing before the leave starts. The fact that you have done so does not automatically mean that it is fair to dismiss an employee who does not return on time, but it will be helpful in justifying your subsequent action.

Maternity pay

This is dealt with in the next chapter.

Pensions

Further guidance on pensions may be obtained from the Department of Social Security, the Occupational Pensions Board, Lynwood Road, Thames Ditton, Surrey KT7 0DP (Tel: 081–398 4242), and from pension specialists

Considerable attention is nowadays being paid to pensions as a form of 'deferred income'. The Social Security Pensions Act 1975 was aimed at improving pension benefits. Employers who operate their own pension schemes need to check whether they meet the minimum criteria imposed by the government, and to indicate the position in writing to their staff (this is usually done in the written statement of terms and conditions of employment). Individual employees may, if they wish, take out a personal pension scheme.

Sick pay

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The Social Security and Housing Benefits Act 1982 created the right for all employees, subject to certain exclusions, to receive statutory sick pay (SSP). Changes were introduced in April 1986.

SSP is paid to employees by their employer, who recovers the payments made from national insurance contributions.

SSP does not relieve an employer from making any other sickness payments that may be given as part of a contractual obligation, though it can be counted as contributing towards them.

SSP is payable for up to 28 weeks of sickness and is based on the level of an employee's average earnings over the previous eight weeks.

SSP amounts are adjusted by the government from time to time. In 1990 the maximum weekly rate for an employee with average weekly earnings of over £125.00 was £52.50.

Employees are excluded from receiving SSP if they:

- are over pensionable age or under 16 years of age
- are on short-term contracts (those of less than three months, provided that this period is specified in the contract at the outset. If not so specified, the employee will be entitled to SSP)
- earn below the national insurance threshold (£46 per week in 1990)
- have already received certain social security benefits such as invalidity benefit
- have not yet started work with the employer
- are sick during a stoppage of work involving a trade dispute at their place of employment, unless they have not taken part and have no direct interest in it
- have already exhausted their entitlement
- are pregnant and fall sick within the 'disqualifying period' (the period of 18 weeks beginning with the 11th week before the expected week of confinement)

- are in prison or in legal custody
- fall sick abroad in a non-EC country.

The method of calculating entitlement to SSP involves defining four terms:

- *period of incapacity for work* (PIW). Any period of four or more consecutive days, each of which is a day of incapacity for work. Any two PIWs which are separated by a period of not more than eight weeks is treated as a single PIW (known as *linking*). Any day is included in calculating a period of consecutive days, even if it was a rest day
- *qualifying days*. These are the days of the week on which an employee is required by the contract of service to be available for work, or which are chosen to reflect the terms of that contract
- *waiting days*. These are the first three qualifying days in any period of entitlement. No SSP is paid for waiting days. In linked periods, waiting days are only set against the first period
- *period of entitlement*. Entitlement ends when an employee's PIW, or series of linked PIWs, totals 28 times the appropriate weekly rate.

In addition, the period of entitlement ends if an employee:

- is no longer incapable for work
- reaches the 11th week before the one in which her baby is due
- has come to an end of his or her contract of service
- goes abroad outside the EC
- is taken into legal custody
- has a linked PIW (with the same employer) of three years or more. This could happen when an employee has a series of short, but linked periods of incapacity.

The DSS will want to know six weeks before an employee's period of entitlement is ending if the PIW is expected to continue. Form SSP1 is completed by the employer and given to the employee to enable the claiming of State sickness benefit.

An employer must issue a Leaver's Statement, form SSP1(L), when an employee leaves if the employee has been entitled to SSP in the preceding eight weeks. The employee should hand this form to a new employer.

An employee must produce reasonable evidence to the employer to support a claim for SSP. A DSS form (SC1) is

available, but many employers prefer to produce their own form which can also be used for any other absences that have not been approved in advance. A doctor's certificate is required for absences of more than eight days (generally one is not available for shorter periods).

Rules are necessary to guide employees in such arrangements as when to apply, and how to notify absence through sickness.

In order to administer sick pay schemes effectively, employers will require efficient staff records (see Chapter 10) detailing such information as:

- dates of sick absence reported by employee
- dates of SSP not paid – with reasons
- details of agreed week (qualifying days)
- date doctor's statement received, and copy of it
- days for which SSP was paid, and the amounts.

Sick pay systems can also be used to monitor absenteeism – a costly problem to many organisations – and so help reduce it

A number of companies have produced comprehensive administration systems – some computerised – to assist in the task.

Tax deduction sheets include columns for recovering SSP and the employer's secondary NI contributions. The employer enters amounts paid on the employee's cards and on the monthly return. The gross amount of SSP paid to employees, and the secondary NI contributions are deducted from the national insurance payments that the employer is due to make.

Equal pay and sex discrimination

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The Equal Pay Act 1970 as amended by the Equal Pay (Amendment) Regulations 1983, the Sex Discrimination Acts 1975 and 1986, and the Employment Act 1989 prevent employers from discriminating between men and women, whether adults or juveniles, in pay, recruitment, conditions of employment, or in the way they treat employees in such matters as promotion, transfer, training, benefits or dismissal.

The Equal Pay Act has the effect of writing an equality clause into a woman's contract of employment and is designed to eliminate sex discrimination from the areas of pay and conditions of employment. The Act applies to all employees regardless of the size of the firm for which they work, how long they have been employed or how many hours per week they work. A woman has the right to equal pay and other contractual terms of employment when she is doing the same or broadly similar work or work rated as equivalent under a job evaluation scheme as a man employed by the same or an associated employer, unless the

employer can show that there is a material difference, other than the difference of sex, between the woman's case and the man's. A woman (and a man) also has the right (since 1984) to equal pay and other contractual terms of employment when she is doing work of equal value as a man employed by the same or an associated employer.

Individuals who feel that they are entitled to equal pay can take a claim to an industrial tribunal while they are employed or at any time up to six months after they have left the employment concerned.

The first equal pay case to reach an industrial tribunal following the 1984 change was brought by a cook/canteen assistant at a shipbuilders. She claimed that her job was of equal value to that of a painter, joiner or thermal insulation engineer. The tribunal ruled in her favour, accepting the independent expert's evaluation of the jobs.

As a result of appeals, the case reached the House of Lords. It was ruled that if her pay was less than males with whom she was compared, she was entitled to equal pay with them despite the fact that other employment terms meant that her contract of employment was, as a whole, not unfavourable.

If collective agreements or pay structures contain provisions relating specifically to men or women only, they can be referred to the Central Arbitration Committee for amendment.

The Sex Discrimination Acts require employers not to discriminate between men and women. So employers should not:

- treat a person of one sex less favourably than a person of the opposite sex, on the grounds of sex
- apply a condition or requirement to both sexes if this has the effect of excluding considerably more persons of one sex and cannot be justified
- treat a married person less favourably than an unmarried person of the same sex because that person is married
- apply a condition or requirement which has the effect of discriminating against married people because considerably fewer married than single people of the same sex can comply with it, and which cannot be justified
- treat a person less favourably than another person of either sex in the same circumstances because that person has taken, or is suspected of taking, action or helping another person to take action, under the Sex

Discrimination Acts or Equal Pay Act (these provisions do not apply if the person has made allegations which are false and are not made in good faith)

- discriminate in the arrangement or provision of vocational training. However, it is lawful to provide discriminatory training to meet the needs of one sex which is under-represented in a particular occupation.

Special treatment, specified by the Secretary of State, for lone parents in the context of special training, employment and enterprise schemes, does not amount to unlawful discrimination against married people.

Discrimination can be lawful where a genuine occupational qualification (GOQ) exists. This could be for considerations of decency or privacy, or where the job holder has to live in premises which are normally lived in by people of one sex, which do not have private sleeping or sanitary facilities which could be used by a person of the opposite sex, and where the employer could not reasonably be expected to provide alternative facilities for the opposite sex, or the job is one of two held by a married couple. Note that the Act states specifically that where strength or stamina are required for a job, sex is *not* a GOQ.

The Sex Discrimination Act 1986 added situations where discrimination can be lawful. If the job were to involve working or living in a private home, and require a degree of physical or social contact with a person living there or the knowledge of intimate details of such a person's life, then discrimination could be justified.

To avoid allegations of sex discrimination advertisements should avoid using words like 'waiter' or 'chambermaid' as the job title. Use 'waiting staff' or 'room cleaners', or 'waiter/waitress', or otherwise make clear that applicants of either sex will be considered. Also avoid expressions in the body of the advertisement that indicate a preference for either sex, for example 'attractive blonde'. An illustration depicting a man or woman in the role could be open to a charge of discrimination.

8 Maternity provisions

L The original provisions of the Employment Protection (Consolidation) Act 1978 relating to maternity were changed principally by the Employment Act 1980 and the Social Security Act 1986.

Antenatal care

The Employment Act 1980 provides pregnant employees with the right not to be unreasonably refused paid time off to attend for antenatal care on the advice of a doctor, midwife or health visitor. There is no qualifying minimum hours or length of service provisions needed for this right.

The woman may be asked to produce, for the inspection of her employer, proof of her appointment for antenatal care (except for the first appointment) and a certificate of pregnancy. If she does this, and is unreasonably refused permission to attend, she can complain to an industrial tribunal, who can order the employer to pay her the sum she would have received had she been given the time off (based on the appropriate hourly rate).

Right to return to work

The law gives an employee who leaves work to have a baby the right to return to her job at any time before the end of 29 weeks beginning with the week in which the baby is born subject to the following conditions:

- an employer with five or fewer workers (including those employed by any associated employer) is exempt from the obligation to allow a woman to return to work if the employer can demonstrate that it is not 'reasonably practicable' to do so, or if suitable alternative work cannot be offered
- employers are not necessarily required to reinstate women in their original jobs – they may offer a 'suitable alternative' job, so long as the terms and conditions are not 'substantially less favourable' than those of the original job.

An employee may postpone her return to work for up to an extra four weeks if she is unfit for work, so long as she can produce a medical certificate to this effect, and an employer also has the right to postpone her return up to four weeks so long as a reason for doing so is given to her.

In order to qualify for the right to return, a woman must:

- continue to be employed up to 11 weeks before the expected time of confinement (that is her contract of employment must still exist, even though she may not be working, because, for example, she is on leave)
- at that time have at least two years' service (or five years' service if she works less than 16 but more than eight hours per week).

Then:

- she must inform the employer that she will be absent from work due to pregnancy, the expected date of confinement, and that she intends to return to work with the employer. This must be done in writing at least 21 days before her absence begins, or as soon as reasonably practicable
- not less than 49 days after the beginning of the expected date of confinement, if the employer requests written confirmation that she intends to return to work, she must provide such confirmation within 14 days, or she will not be entitled to the 'right to return'. The employer's letter must include a written statement to this effect
- at least three weeks before intending to exercise her right to return to work, she must notify her employer, in writing, of her intention to return – or lose the right.

This is a complex system, and to avoid misunderstanding and difficulties, employers should make sure that their records and administrative systems are efficient and well understood, and that pregnant employees are clear about their rights and obligations.

With the two year minimum period of employment before an employee can claim unfair dismissal, taking on a replacement to cover for maternity leave should present few if any difficulties. However, if the job is intended to be temporary this should be made clear to the replacement.

There is no statutory right to paternity leave in the UK. However, some employers are giving paid paternity leave, sometimes as the result of union pressure. The Equal Opportunities Commission is also encouraging its introduction.

Statutory maternity pay

Statutory maternity pay (SMP) is payable to employees who take maternity leave, or leave their employment because of pregnancy or confinement. To qualify for payment, a pregnant employee must:

- have been continuously employed by the employer for at least 26 weeks ending with the 15th week before the *expected week of confinement* (EWC). This 15th week is known as the *qualifying week* (QW)
- have average weekly earnings of not less than the lower earnings limit for the payment of national insurance contributions which is in force during her qualifying week
- still be pregnant at the 11th week before the expected week of confinement, or have already been confined
- have stopped working wholly or partly because of her pregnancy or confinement
- provide her employer with notice of her maternity absence. The employer has the right to ask for this in writing, and the notice must be given at least 21 days before the absence is due to start, or as soon as is reasonably practicable
- provide her employer with evidence of her expected week of confinement. This will normally be on a maternity certificate (form Mat B1), which cannot be issued before the 27th week of pregnancy. Evidence should normally be produced by the employee no later than the end of the third week of her *maternity pay period* (MPP), but this can be extended to no later than the end of the 13th week if there are good reasons
- not be abroad outside the EC, or in legal custody, at any time in the first week of maternity pay period.

If the employee satisfies the qualifying conditions with more than one employer, she can receive SMP from each of them.

Payment Payment is subject to deductions for income tax and national insurance. It is intended that SMP shall be paid on normal pay days, and at the usual pay intervals. SMP is payable for the maternity pay period of up to 18 weeks. The period cannot start earlier than the 11th week before the expected week of confinement, and automatically starts from the sixth week before the EWC. However, the employee may continue to work after the sixth week before the EWC, in which case she will not receive SMP until she stops work. In this case, she will not receive the maximum 18 weeks' entitlement.

There are two rates of SMP. The higher rate is payable for the first six weeks of absence where the employee has been employed by her employer for a period of at least two years at 16 hours or more a week, or at least five years at between 8 and 16 hours a week. The lower rate is payable for the remaining period in these cases, and for the whole period where the service qualifications are not met.

End of liability

Liability to pay SMP ends in any of the following circumstances, if the employee:

- has received the maximum 18 weeks' payment
- works for the employer at any time during her maternity pay period
- works after confinement for a new employer during the MPP
- goes outside the EC or is taken into legal custody
- dies.

Records

Records must be kept for three years, and made available to the Department of Social Security (DSS) inspectors on request. The records must show:

- the date of maternity absence notified by an employee, and, if different, the actual date of the first day of absence
- the weeks in which SMP is paid, and the amount paid in each week
- the weeks within a maternity pay period for which SMP is not paid, together with reasons
- maternity certificates or other medical evidence provided by employees for whom SMP is paid.

Special cases

There are rules covering situations such as confinement before the expected week of confinement and still birth.

In some cases, a seasonal worker can qualify for SMP even though she is not actually employed during the QW. A period of absence up to, and including the QW, may count towards the pregnant woman's continuous service when it is customary for the employer to offer short periods of work to her, as and when they arise.

Taking action

As soon as an employee's pregnancy is known, her eligibility for receiving SMP should be checked. If she appears to qualify, the situation should be discussed with her, and the following checked:

- the expected week of confinement (EWC)
- her intentions on the starting date of maternity absence. Normally, the employer should be notified at least 21 days before the absence starts.

A copy of the current *Employers' Guide to SMP*, and a *Table of Dates* should be obtained from the DSS. The latter booklet also contains copies of the forms that may be needed, including a checklist for calculating the employee's entitlement

The employee should provide written evidence at or after the 27th week of pregnancy.

It should be noted that SMP is not dependent on returning to work following the birth of the child.

SMP is recovered through tax deduction sheets by the same method used for SSP.

Dismissal

Dismissal of an employee because of her pregnancy, or any reason connected with it, is automatically unfair unless:

- her condition makes it impossible for her to do the job adequately
- she cannot continue to work without contravening the law (because of exposure to X-rays, for example).

Before a woman can be dismissed for one of these reasons, the employer must try to offer a suitable alternative job. If she is dismissed because there is no alternative job she will retain the right to return to her job and to statutory maternity pay. If she refuses an offer of suitable alternative work, she will be considered to have resigned, and lose her rights.

The employee must meet the qualifying conditions, including length of service, in order to bring a claim for unfair dismissal. However, it has been held in some cases that dismissal because of pregnancy may constitute unlawful sex discrimination, in which case no qualifying service may be necessary.

Complaints about unfair dismissal, or failure to offer alternative employment, are heard by industrial tribunals.

9 Racial discrimination

P The hotel and catering industry has for many years given employment to large numbers of staff with a wide variety of ethnic origins. Hoteliers and caterers in most parts of the UK also deal with a wide racial mix of customers. By and large, this has occurred without too many problems, although some employers have been investigated by the Commission for Racial Equality (CRE) and served with non-discrimination notices. Considerable efforts need to continue to ensure that ethnic minority groups are not discriminated against, and that they have full opportunity to develop and use their talents and abilities.

The CRE has powers to conduct formal investigations and can assist an individual in taking a complaint to a court or an industrial tribunal. The CRE's *Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment* advocates that employers adopt an equal opportunities policy to ensure against unlawful discrimination and to promote genuine equality of opportunity. This should be clearly communicated to all staff.

Other recommendations are that employers should:

- allocate overall responsibility for the policy to a senior member of management
- discuss and try to agree with trade union or employee representatives the contents and implementation of the policy
- make sure that the policy is known to all employees and job applicants
- provide training for all supervisory staff and other relevant decision makers to ensure that they understand their responsibilities under the law and under company policy

See also Chapter 5

- examine and regularly review existing procedures and criteria and, where they are found to be actually or potentially discriminatory, to change them
- make an initial analysis of the ethnic composition of the workforce to identify possible areas for action

- monitor the ethnic composition of the workforce and of job applicants regularly in order to evaluate the progress of the policy.

Check that discrimination is avoided by:

- carefully wording recruitment advertisements
- using sources of recruitment that are equally accessible to all groups
- not prescribing requirements, such as specific qualifications, that could be seen to discriminate
- making sure that selection criteria relate only to job requirements, for example in the use of written or oral English
- making sure that all eligible employees are aware of vacancies and procedures for promotion and training
- incorporating equal opportunity issues into existing training courses on recruitment and selection of staff, customer contact and staff development.

Bear in mind that cultural and religious needs may conflict with work requirements. In some situations, problems may arise from ethnic clothing: a Sikh's turban or other apparel preferred by Asian employees, for example. The observation of prayer times and religious holidays may conflict with work schedules. Seek to rectify any conflict between work requirements and employees' cultural and religious needs.

The Race Relations Act 1976 applies only to Great Britain and not Northern Ireland

The Race Relations Act 1976 permits employers in certain limited circumstances to take initiatives that will help to integrate members of racial minority groups into the workforce. For example, an employer with no, or disproportionately few, members of a racial minority group doing particular work may lawfully encourage members of that group to take advantage of opportunities for doing that work, and can run special training courses for existing employees of the racial groups in question.

Training has an important part to play in the maintenance of good race relations and training in the use of English can be particularly helpful to immigrant workers as well as to the employer.

10 Staff records

Records

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Staff records assist in effective use of staff by:

- cutting down the decisions that have to be made on the basis of guesswork
- enabling the detection and control of problems in recruitment, staff turnover, sickness, accidents, and so forth
- highlighting individual levels of performance that can be compared with the standards desired, which will assist in staff development.

Staff records also provide factual *written* information, for example of warnings, disciplinary matters and absence. If such information is kept 'in the head' of a manager, it is liable to be forgotten or muddled – worse, it is lost to the organisation if the manager leaves or is absent. Written records can also be vital in employment disputes (for example unfair dismissal cases) where they may form an important part of the evidence.

The type of records kept will depend on the size and nature of the business. An example of the details most organisations will probably need to keep is given opposite.

ACAS Advisory Booklet No 3 *Personnel Records* gives further advice and examples. The example of a labour turnover analysis record sheet overleaf is reproduced from this booklet

When designing a record system bear in mind the routine returns required by government departments. Perhaps, for example, custom-built records can help save time in completing them, or one of the simple record systems available from a number of office equipment suppliers will be effective. Many computer systems can be extended to cover personnel records, with restricted access to preserve confidentiality.

Whatever system is established, it needs to be accurate, up-to-date, reliable, confidential and consistent.

Data Protection Act 1984

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This Act, which regulates the use of personal data, applies to the computerised administration of prospective, current and past employees. Data is defined as information in a form in which it can be processed automatically and personal data as information about a living individual, including expressions of opinion about him or her, but excluding any indication of the intentions of the data user in respect of that individual.

Applications for registration as a data user or computer bureau are made on form DPR1, obtainable from main Post Offices, and from the office of the Data Protection Registrar

The Act lays down how personal data can be acquired, the purposes for which it is held, the time for which it is retained, the rights of individuals to be informed on data held about them and their access to it, and security of data.

There are some exemptions from the need to register, in particular where data is held only for payroll purposes. In this case, the data must not be used for any other purpose, and there are strict rules concerning the circumstances in which disclosure is permitted.

With limited exceptions, every person has the right to request, and be informed, whether personal data is held on them.

Staff records

For individual employees

1. Name.
2. Sex.
3. Next of kin.
4. Address.
5. Telephone number.
6. Date of birth.
7. Educational qualifications.
8. Whether registered disabled, and if so, disablement number.
9. Date of commencement.
10. Previous employment history.
11. Hours worked (especially if covered by a wages council).
12. Grade.
13. Wage rate, date of review and amount awarded.
14. Holidays (entitlement and days taken).
15. Sickness record (including details of sick pay).
16. Absence record.
17. Accident record.
18. Lateness record.
19. Disciplinary record (if applicable).
20. Training (eg courses attended).

For groups of employees

1. Staff turnover and stability analysed by department or job type.
2. Accident rate analysed by department.
3. Records of the racial/ethnic origin of employees, to enable a check to be made of how the organisation needs to act to ensure that all staff have equal opportunities.

Example of labour turnover analysis record sheet

Department			Period		
Length of service	Sex	Left voluntarily	Dismissed	Redundant	Total
Less than 1 month	M				
	F				
1–3 months	M				
	F				
4–12 months	M				
	F				
1–5 years	M				
	F				
Over 5 years	M				
	F				
Total	M				
	F				

	M	F	Total
(a) Total employed at beginning of period			
(b) Total number of leavers during period			
(c) Total starters during period			
(d) Total employed at end of period			
(e) Average number employed during period, ie $\frac{(a) + (d)}{2}$			

Labour turnover (%)

$$\frac{\text{Number of leavers during period} \times 100}{\text{Average employed during period}} \text{ ie } \frac{(b) \times 100}{(e)} =$$

Labour Stability Index (%)

$$\frac{\text{Number currently employed with 1 year's service or more} \times 100}{\text{Total number of employees 1 year ago}} =$$

Acknowledgement: the above is taken from ACAS Advisory Booklet No 3

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BEST COPY AVAILABLE

11 Retaining and developing your staff

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One of the most important tasks a manager faces is that of getting the best out of staff. This means helping staff to carry out their present duties as effectively as possible and also working with them to enable them to take on other, perhaps more demanding duties, if this is possible.

Previous chapters have made reference to the problem of labour turnover and the need for action to minimise it. Few people work purely for the money; job satisfaction is of major importance in retaining staff.

A number of factors affect job satisfaction. They include:

- working conditions, both the atmosphere and the equipment and materials provided
- relationships with supervisors and colleagues
- benefits, including staff accommodation and meals, and 'fringe' benefits
- interest and variety within the job
- recognition of performance, and opportunities for training, development, and promotion.

The Hotel and Catering Training Company self-study unit *Staff Retention* will help. It includes sections on staff motivation and job design

It is often worthwhile carrying out a survey of staff to find out their levels of job satisfaction. The results may show areas of dissatisfaction where improvements can be made.

The Hotel and Catering Training Company produces a wide range of resources to support training, as well as running courses for trainers

A major survey has shown that only a fifth of British employers who undertook training could list the benefits, and only two-fifths costed the training. It found training concentrated on the young and the new, while showing little evidence of developing new skills among existing employees. There did not appear to be a lot of forward planning; training was usually a response to immediate pressures.

Succession planning will help to ensure that existing staff are considered for new opportunities, and provided with training and development to enable them to achieve and maintain the required standards of performance.

Staff appraisal

Most employers regularly appraise staff performance, but it can often be an informal procedure, less likely to develop the best from their staff than a systematic approach.

It is important that the appraiser and appraisee understand the purpose of the process. Both should be trained in its techniques and adequate time and attention must be devoted to the process. Also, proper plans are necessary to ensure that action agreed at an appraisal interview does actually happen. Many otherwise excellent appraisal schemes have been discredited because of a lack of follow-up.

The potential benefits of appraisal are varied but include:

- getting the best out of an individual in the present job
- helping to develop the employee for another job, if appropriate
- improving staff morale because the organisation is seen to care about staff progress
- forming the basis of a training plan and if appropriate a staffing development plan
- enabling realistic targets for achievement to be set (and previous targets to be regularly assessed)
- (for large organisations) a consistent approach to the development of staff across all divisions and units.

Although the basics of an appraisal system are simple, see the checklist, experience shows some common pitfalls when putting them into practice. These include:

- failure to demonstrate commitment to the scheme at senior level. Junior staff take their cue from the boss
- failure to train appraisees in what to expect. There are often very understandable worries about confidentiality of personal records and the use to which the scheme is put
- an over reliance on paperwork. Appraisal documents need to be acted on and regularly reviewed: not just filed
- failure to persist with the introduction of the scheme, and see it through over a two or three year period. Appraisal is no instant panacea, but a better, long term, way of working.

Checklist Appraisal interview

Before the interview, has the appraiser:

1. Checked details of any previous appraisal discussions?
2. Informed the appraisee of the forthcoming interview?
3. Gathered information on the subject headings to be discussed?
4. Set aside time?
5. Arranged a quiet place and for there to be no interruptions?
6. Let the appraisee know the subject headings?
7. Geared the appraisal approach so as to establish norms for action in the future rather than simply to review historical performance?

Before the interview, has the appraisee:

1. Been made familiar with the purpose of the meeting?
2. Been told the subject headings to be raised?
3. Had the opportunity to think about what needs to be discussed?

After the meeting have the appraiser and appraisee agreed:

1. A record of what has been discussed?
2. A programme to review and monitor plans and targets set?

12 Trade unions and the employer

L The Employment Protection (Consolidation) Act 1978 protected employees against any discrimination or victimisation by their employer, which would be intended to prevent them from being, or seeking to become, a member of an independent trade union. This Act also established new legal rights concerning disclosure of information to unions for collective bargaining purposes, time off for union activity, and protection against dismissal because of union membership. Later legislation provided protection for employees who do not want to be a member of a trade union. The Employment Act 1988 gave new rights to trade union members, mainly to protect them against abuses of power by their union.

Recognising a trade union for collective bargaining

The process by which an employer agrees to deal with a trade union – recognition – often starts with an agreement that the employer will deal with the union on disciplinary matters only. The scope of the agreement may then be gradually widened by mutual agreement to include such matters as:

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- terms and conditions of employment, or the physical conditions in which any worker is required to work
- engagement or non-engagement, or termination or suspension of employment, or the duties of employment of one or more workers
- allocation of work or the duties of employment as between workers or groups of workers
- facilities for officials of trade unions
- machinery for negotiation or consultation, and other procedures relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures.

The decision whether or not to recognise a trade union is one that must not be taken lightly. An employer should be aware of the implications, and should find out the views of the staff involved.

ACAS has a duty to advise and conciliate in recognition cases, if invited to do so. Employers can also seek confidential advice from ACAS if they are faced with a request for union recognition or if they require assistance in drawing up a procedural agreement. It is thus left to employers and unions to arrive at a mutually acceptable arrangement as to when and if recognition is to be granted, and the range of matters to be covered by any such agreement.

If an employer decides to recognise a trade union for collective bargaining, it is not sensible to do so grudgingly. Far better to be positive and to work towards the development of an effective relationship, especially at a local level.

ACAS code of practice *No 3 Time Off for Trade Union Duties and Activities* gives further information.

A good practice is to make available appropriate facilities for staff representatives to use. This might take the form of access to administrative facilities, notification of engagement of new employees, or access to a telephone, to help the representatives to be more effective, both to the staff they represent, and, thus also, to their employer.

Trade union immunities

When employees go on strike or take other forms of industrial action, they will usually, by doing so, be in breach of their contracts of employment. This means that when trade unions or trade union officials call for industrial action they are in practice calling on the employees concerned to break their contracts. The same is true of an individual picket who tries to persuade others not to go into work or not to deliver or collect goods. Both organisers and individual pickets may also be interfering with the ability of the employer of the employees and of other employers to fulfil their commercial contracts.

Common law underlies much of the law of this country. It is basically case-law developed by the courts, as opposed to statute law passed by Parliament

Under common law it is unlawful to induce people to break their contracts or to interfere with the performance of a contract or to threaten to do either of these things. This means that without some special protection, trade unions or trade union officials might face the possibility of legal action for inducing breaches of contract every time they called a strike.

Trade unions have been given certain legal immunities to stop this happening. So trade unions and individuals can, in certain circumstances, call industrial action without fear of being sued in the courts for inducing breaches of contract.

Trade union immunities:

- protect those who persuade others to break their contracts: they do *not* protect those who by going on strike break their own contracts. This means that even where the organisers of strikes can claim legal immunity,

individual strikers may face disciplinary action for breaking their contracts. An employee may even be taken to court by the employer and sued for breach of contract – although this rarely happens

- are primarily concerned with the *civil* not the *criminal* law. It is not a criminal offence to strike†. But if in the course of a strike someone commits a criminal offence (for example, by assaulting another person or damaging someone's property), that person committing the offence has no special protection and is just as liable to be prosecuted by the police as any other member of the public.

†Except in the case of the police, the armed forces and merchant seamen when they are at sea

The circumstances covered by the immunities have changed over the years. By the late 1970s most calls for industrial action were protected, but such industrial action could, and sometimes did, inflict considerable damage on industry and the community, and the Employment Acts 1980, 1982 and 1988 have withdrawn immunities from the organisation of certain types of industrial action.

No special immunity for trade unions

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The Trade Union and Labour Relations Act 1974 protected trade unions (as opposed to union officials or other individuals) from legal proceedings if they organised unlawful industrial action, and, in certain circumstances, prevented them from being sued if they committed other unlawful acts like negligence, nuisance, breach of duty and defamation.

This special immunity was abolished by the Employment Act 1982. The immunity for trade unions and for individuals is now exactly the same. In other words, it is possible to seek injunctions against, and sue for damages, trade unions, as well as individuals, if they organise unlawful industrial action, or commit other unlawful acts.

The law does not protect those organising industrial action and those taking part in picketing from being sued for inducing breaches of contract if those concerned commit unlawful acts other than inducing breaches of contract, or if the industrial action:

- is not in contemplation or furtherance of a trade dispute
- is unlawful secondary action
- constitutes secondary picketing
- is being taken against persons because they employ non-union (or union) labour or because they do not recognise a union.

Trade disputes

Basically, two main conditions must be satisfied for a trade dispute to be lawful:

- there must be a dispute between workers and their own employer *and*
- the dispute must be wholly or mainly about such matters as their pay and conditions, jobs, allocation of work, discipline, negotiating machinery and trade union membership.

The original detailed legal definition of what constitutes a trade dispute is contained in Section 29 of the Trade Union and Labour Relations Act 1974. Special provisions cover those public sector employees whose pay is fixed not by their employer but by statutory negotiating machinery or by a Minister. Section 29(2) enables such workers to be in lawful trade dispute about their pay, even though they are not in dispute with their own employer

The Employment Act 1982 excluded disputes:

- between groups of workers or between trade unions, where no employer is involved in the dispute
- between workers and employers other than their own
- between a trade union and an employer, where none of that employer's workforce are in dispute with the employer
- which have only *a connection* with matters like pay and conditions and are not *wholly or mainly* about such matters
- which relate to matters occurring overseas (except where workers taking action in this country in support of the dispute are likely to be affected by its outcome)

from the definition of a lawful dispute.

Under the Employment Act 1988, a union member has the right to apply to the court for an order to restrain the union from inducing him or her, and other members, to take part in any kind of industrial action in the absence of a properly conducted secret ballot. The result of this ballot must be that a majority of those voting indicate that they wish to take part in the action.

The Employment Bill 1989 will make unions potentially liable for industrial action which has not been officially sanctioned by the union. Trade unions will be responsible for action organised by their officers or any group which organises or co-ordinates industrial action, and which includes an official. Employers will also be able to selectively dismiss the organisers of such action.

Trade unions will either have to repudiate or accept responsibility for unofficial action, and they will no longer enjoy immunity from damages claims for any forms of secondary industrial action.

Secondary industrial action

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'Secondary action' is defined in Section 17 of the Employment Act 1980 as being the organisation of industrial action taken by workers (in breach of their contracts of employment) whose employer is not a party to the trade dispute. For example, if a dispute arises between an employer and the employer's workforce at one

establishment, action by workers of *another* employer to support the workers in dispute will usually constitute secondary action.

Where such action interferes with the performance of *commercial* contracts, or threatens to do so, its organisers have no protection from legal proceedings unless four conditions are satisfied:

- the workers involved in the secondary action work for a customer or supplier of the employer in dispute, *and*
- that supplier or customer has a current commercial contract with the employer in dispute, *and*
- the principal purpose of the secondary action is directly to prevent or disrupt supplies to or from the employer in dispute during the dispute, *and*
- the secondary action is likely to achieve that purpose.

Broadly, this means that secondary action is lawful only where it is taken by those who work for a supplier or a customer of the employer in dispute and the action is directed at the business being conducted between the supplier or customer and the employer in dispute. If the secondary action is indiscriminate in its effects – for example, if its principal effect is to disrupt the business of other employers, not involved in the dispute – then its organisers have no immunity and may be liable to legal proceedings brought by those damaged.

Associated employers

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Special provisions cover the situation where an employer in dispute transfers work normally done by his or her own employees to an associated employer, such as a subsidiary company. In such circumstances the organisation of industrial action by workers at the associated company, or at their customers or their suppliers will be lawful only if both the following conditions are satisfied:

- the principal purpose of the action is to prevent, or disrupt the supply of goods or services which, but for the dispute, would have been supplied by, or to the employer in dispute
- the action is likely to achieve that purpose.

Secondary picketing

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Those who organise, or take part in secondary picketing – that is, picketing at a place other than the picket's own place of work – have no legal protection. This is so whether or not the picketing is in contemplation or furtherance of a trade dispute.

What constitutes unlawful picketing is defined in Section 15 of the Trade Union and Labour Relations Act 1974, as amended by Section 16 of the Employment Act 1980, and Section 12 of the Employment Act 1982. Picketing is now lawful only if it is in contemplation or furtherance of a trade dispute, and:

- the person is picketing at or near his or her own place of work
- the purpose of the picketing is peacefully to obtain or communicate information, or peacefully to persuade a person to work or not to work.

There are three exceptions to the requirement that a person may picket lawfully only at or near his or her own place of work:

- a trade union official may accompany a member of the union whom the official represents so long as the member is picketing at his or her own place of work
- a person, for example, a mobile worker, who does not normally work at one particular place, or for whom it is impracticable to picket at his or her actual place of work, may picket at the premises of the employer from which he or she works or from which the work is administered
- a person who is not in employment may picket at his or her former place of work in contemplation or furtherance of a trade dispute, but only if the termination of employment with the employer gave rise to or is connected with the dispute in support of which he or she is picketing.

More detailed information about the law on picketing is contained in the code of practice: *Picketing* issued under the powers given to the Secretary of State for Employment in Section 3 of the Employment Act 1980. This outlines the law on picketing and gives practical guidance on its conduct. Copies are available free of charge from Jobcentres, employment offices and unemployment benefit offices

Where picketing does not satisfy these conditions, it has no legal immunity and the pickets or their organisers may be taken to court by those who are damaged by the picketing. Picketing which is not peaceful – for example, if it involves violent or abusive behaviour or involves obstruction of the highway – may also be a criminal offence; and in such circumstances those responsible may be arrested and prosecuted by the police.

Industrial action against non-union firms

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Another type of industrial action for which there is no protection – regardless of the existence of a trade dispute – is that taken against employers simply because they are employing non-union (or union) labour, or because they do not recognise a trade union. These provisions are part of wider measures to protect non-union firms.

Other unlawful acts

Where those who organise industrial action, or take part in picketing have legal immunity, that immunity protects them only from legal action for inducing breaches of

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contract, or threatening to do so. This means that strikers, or pickets, or their organisers, who commit other civil wrongs or criminal offences have no immunity, and if such wrongs or offences are committed at the same time as inducement to breach a contract, then even the immunity for that inducement may be lost.

This point was underlined by the repeal in Employment Act 1982 of Section 13(2) of the Trade Union and Labour Relations Act 1974, which it had been suggested might in certain circumstances have given protection to those involved in sit-ins

So if, for example, strikers or pickets commit an unlawful trespass, they are just as liable to be sued for that and any other unlawful acts involved (including inducing breaches of contract) as any other members of the public who occupy premises unlawfully.

Remedies

Basically, two remedies are available to those who go to court about unlawful industrial action.

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First, those damaged can seek a court order to prevent the action or have it stopped. If the case is urgent, courts may grant such an order on an interim basis, without waiting for a full hearing of the case. However, the unions or individuals against whom the order is sought have the legal right to be given a chance to put their case. If an order is made but disobeyed, those who sought it can go back to court and seek to have those concerned declared in 'contempt of court'. Anyone found to be in contempt of court may face fines or even imprisonment.

Second, it is possible to claim damages from those responsible for unlawful acts. Such cases must go to a full hearing of the case which will usually be at a later date. An action for damages may be preceded by an application for an order, but there is no requirement that it should do so.

Trade union membership

Since 1971 the law has protected the rights of individuals to join trade unions and to take part in their activities. The 1980 and 1982 Employment Acts greatly increased the legal protection for people who did *not* want to belong to trade unions – previously very limited – and there was virtually no protection at all for the non-union employee in a closed shop.

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Dismissal is automatically unfair if employees:

- are dismissed or are selected for redundancy because they belong, or propose to belong, to a trade union or because they have been taking part in trade union activities at an appropriate time†, *or*
- are dismissed because they are not a member of any trade union, or of a particular trade union, or have refused or propose to refuse to become or remain a member.

†An appropriate time means, broadly, a time when the employee has the employer's permission to take part in these activities or any time when the employee is not required to be at work, such as lunch-times

Individuals may complain to an industrial tribunal where action short of dismissal is taken by an employer to prevent,

or deter them from belonging to an independent trade union, or from taking part in union activities at an appropriate time.

Remedies

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The remedy which a tribunal will provide in all these cases involving membership or non-membership of a union depends on the employer's action. If the employee concerned has been dismissed, the employer will either be ordered to take the employee back or to pay compensation, when, as a result of the Employment Act 1982, compensation will normally be much higher than in other unfair dismissal cases. In addition, where dismissal (other than because of redundancy) has occurred, a tribunal can be asked for an order of interim relief pending a full hearing. This order requires the employee's contract to be continued until then. Applications for interim relief must be made within seven days of dismissal.

If the employee has not been dismissed but has suffered some other action by the employer, the tribunal will make a declaration to this effect and may also award compensation. Applications to a tribunal in any of these cases must normally be made within three months of the dismissal or other action concerned.

The closed shop

A closed shop is an agreement between an employer and one or more trade unions which requires certain employees to be members of a trade union. Such agreements may not be written down: they are often a matter of custom and practice.

The Employment Act 1988 has removed all statutory support for the closed shop. Employers may still refuse job applications because of non-membership of a trade union, although this will no longer be the case when the Employment Bill 1989 becomes law. The effect of this will be the abolition of the closed shop.

Trade union liability over union membership issues

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Under common law it has always been possible for union members to take their union to court if they think that the union has broken its own rules in some way. One example might be where a union disciplines a member for doing something which the rule book says he or she is allowed to do. However, this safeguard provides no protection against unions which treat their members unreasonably but do so within their rules. The Employment Acts 1980 and 1982 have therefore provided remedies against unions which act unreasonably either in expelling or refusing to admit a member or in putting pressure on an employer to dismiss or take other action against non-union employees.

The 1988 Employment Act strengthened members' rights by specifying union actions which count as discipline, and the

conduct for which discipline is unjustifiable. It also provides a right of complaint to an industrial tribunal, and a right to apply for compensation, where an individual has been unjustifiably disciplined.

Discipline includes expulsion, payment of money, treatment of union subscriptions for a different purpose, and deprivation of benefits, services, or facilities.

Unjustifiable discipline relates to issues such as:

- going to work despite a call to take strike or other industrial action
- crossing a picket line
- speaking out against a call to take strike or other industrial action
- refusing to pay a stike levy
- asserting that union rules or lawful agreements have been broken
- helping another person to make, defend, or vindicate such assertions
- refusing to comply with a penalty imposed following disciplinary action which was itself unjustifiable.

Unreasonable exclusion or expulsion from a union

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Although closed shops no longer have statutory protection, job applications may be refused because of non-membership of a trade union. Employees who work in a closed shop, or who are seeking work in one, are entitled under the Employment Act 1982 to a remedy from a tribunal if they are unreasonably expelled or excluded from the union which the closed shop requires them to join. In deciding whether someone is entitled to this remedy a tribunal will consider not just whether the union has acted in accordance with its own rules but also all the other circumstances surrounding the union's action, including its fairness. Where relevant the tribunal will consider guidance in the code of practice: *Closed Shop Agreements and Arrangements* (issued under the Employment Act 1982), on such issues as when a union ought not to discipline members who refuse to strike. If a tribunal decides that a person has been unreasonably expelled or excluded from a union it will declare that this has happened – a clear indication to the union that it must now admit or readmit the person concerned – and may later award compensation. A complaint to a tribunal of unreasonable exclusion or expulsion must normally be made within six months of the action concerned.

Union pressure on employers to dismiss non-members

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When an employer takes action (whether dismissal or action short of dismissal) against a non-union employee because of pressure, in t! e form of actual or threatened industrial action, exerted by a trade union because the employee was not a member of a trade union, the employer or the employee concerned can require the union involved to be brought in as a party to any tribunal proceedings. If the tribunal decides to award the employee compensation and finds that the union did, indeed, put such pressure on the employer it may order the union to pay some or all of its award of compensation to the person concerned.

Union labour only and union recognition requirements

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What were known as *union labour only requirements* and *recognition requirements* made it a condition of getting on to a tender list, or of obtaining a contract, that the contractor employed only trade union members or recognised, negotiated or consulted with trade unions. The effect of such requirements was to exclude non-union businesses – particularly small firms and self-employed people – from obtaining contracts and they were prohibited under the Employment Act 1982. The Act:

- declared void union labour only and recognition requirements in contracts
- made it a breach of statutory duty to impose such requirements in the drawing up of tender lists and the awarding of contracts
- removed the legal immunities from trade union pressure to impose and enforce such requirements
- removed the legal immunities from the organisation of other industrial action which interferes with goods and services from non-union sources.

Industrial action against non-union businesses

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The Employment Act 1982 also dealt more generally with trade union action against businesses which do or do not employ union labour or which do not recognise, negotiate or consult with trade unions or trade union officials.

As a result of the Act, a trade union or individual who organises or threatens industrial action (in breach of contracts of employment) will have no legal immunity and may face legal proceedings if the industrial action interferes with the supply (whether or not under a contract) of goods or services or can reasonably be expected to have that effect; *and* the reason or one of the reasons for that action is *either*:

- that work done or to be done in connection with the supply of the goods or services has been, or is likely to be, done by persons employed by another employer who are or are not union members; *or*

- the supplier of the goods or services (in practice, the contractor) does not recognise, negotiate, or consult with trade unions or trade union officials.

Some examples of the type of industrial action which may be affected by this provision are:

- employees' refusal to handle goods from another firm because the goods were produced by non-union employees
- trade union blacking of the goods and services of a firm and its customers because the firm does not recognise a trade union for collective bargaining
- workers' refusal to work with another employer's workers or to allow them to enter a place of work because they do not have the appropriate union card.

Removing the legal immunities in these cases gives to those who are, or may be damaged by the unlawful industrial action, the right to seek an order against the trade union or individual who is organising it, to restrain their unlawful acts, and to sue them for damages.

Trade union secret ballots

The Employment Act 1980 contains two provisions to encourage greater use of secret ballots.

Firstly it enables payments to be made out of public funds towards the costs which an independent trade union incurs in holding postal ballots for these purposes:

- calling or ending a strike or other industrial action
- accepting or rejecting a proposal by an employer on pay and certain other related matters
- electing trade union officials in accordance with the union's rules
- amending the union's rules
- ballots under the Trade Union (Amalgamations etc) Act 1964.

The Certification Officer for Trade Unions and Employers' Associations is responsible for the administration of the public funds.

Secondly, an employer with more than 20 workers can be requested by an independent trade union which is recognised for collective bargaining purposes to provide a place on the premises where the members may vote in a secret ballot. If the employer refuses, then the union can complain to an industrial tribunal and may be awarded compensation.

The Trade Union Act 1984 provides that all trade union members who are likely to be called upon to take part in a

strike or industrial action must be allowed to vote on the issue in a secret ballot at their place of work. The ballot must be held no more than four weeks before strike action begins. If a union calls for a strike, either without a ballot or a majority vote in favour, it loses its legal immunity from damages, claims and injunctions.

The Employment Act 1988 gives a union member the right to apply to the court for an order restraining the union from inducing him or her, and other members, to take any kind of industrial action in the absence of a properly conducted secret ballot in which the majority of those voting indicate that they wish to take part in the action.

The 1984 Act also requires that all voting members of a trade union's Principal Executive Committee must be re-elected at intervals of not more than five years.

Political funds

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The Trade Union Act 1984 states that a trade union must ballot its members, and re-ballot them at least every ten years, to maintain a political fund. Where an employer operates a check-off system (union dues are deducted before payment of wages or salaries) a political fund element must not be deducted where an employee has either:

- certified in writing to the employer that he or she is exempt from contributing, or
- notified the union in writing of his or her objection to contributing to the union's political fund.

13 Communication and consultation with employees

P Any discussion of how to improve employee relations is likely to emphasise the importance of effective communication between staff and management, and between different departments.

It is not possible in a book of this sort to explore fully the merits of different systems or approaches to communication, consultation, or participation. However, a careful assessment should be carried out, embracing the whole circumstances of an organisation and the expectations of its staff, taking into account:

- the history of employee relations in the organisation
- the requirements of employment law
- expectations and attitudes of staff and management

and the following notes are intended to give an introduction to some approaches.

Joint consultation

In this process, employers and employees discuss, before decisions are taken, matters affecting the efficiency of the enterprise and the interests of the employees. It is generally carried out by committees, incorporating trade union representatives if applicable, with an agreed constitution.

In an industry as personalised as hotels and catering, management and staff meet frequently during the working day with the opportunity to exchange views and ideas. The joint consultation approach is a way of *systematising* this process, allowing the exploration of views and ideas *before* managers take decisions.

Consultation is a free exchange of views on matters which affect staff, as a result of which management will be able to make better informed decisions. It does not involve any attempt to strike bargains where matters are in dispute – it is not the same as negotiation which involves a process of give and take so as to reach a mutually acceptable solution or decision.

Joint consultation has claims to three main achievements:

- the quality of management decisions and of the working life of staff improve because the views, experience and ideas of staff are taken into account before decisions are made
- when staff have contributed at the formative stage of management decisions (especially where changes are involved), they are more likely to co-operate wholeheartedly with any action resulting from subsequent management decisions
- much misunderstanding and mistrust is avoided by providing informal discussions to clarify issues before decisions are reached.

Experience shows that while it is known that considerable training is generally required when a consultative committee is set up, both for management (in the effective conduct of joint consultation meetings), and for staff (in the use of the system), in reality it gets inadequate attention. Patience is also needed; there will always be teething troubles.

Communication

Everyone agrees that, in most organisations, good communications are vital to good performance. Yet imperfect communications continue to cause disputes and misunderstandings.

One successful technique to pass information swiftly through an organisation is that of 'briefing groups' or 'team briefing'. These groups:

- increase commitment of staff to their jobs
- clearly identify and support the team leader
- reduce the number of misunderstandings
- increase co-operation when introducing a change
- lessen the damage of rumours (the grapevine always denigrates management – usually without foundation).

A written brief is prepared of the essential items of information, and usually suggested answers to likely questions. The first group to meet (usually at a senior level) is given the brief and each member of this group then becomes the leader of a group at the next lower level. The process is repeated as often as is necessary, keeping the number of levels as few as possible.

For effective briefing it is important that:

- the manager or supervisor briefs the group face to face
- the group is kept to a manageable size
- briefings are regular and relevant

Help in setting up an effective communication and consultation system is available from ACAS, the Industrial Society and HCTC

- understanding is monitored
- close attention is paid to the 'starting up' problems of briefing groups
- the system is monitored to ensure that briefings are being held as planned.

The process enables speedy, accurate transmission of information and involves all levels, including supervisors, who may otherwise be left out. It does not replace consultation or negotiation, but enables management to tell employees of developments as necessary. It also provides some degree of feedback to management, via the staff's questions.

Other means of communicating with staff include: notice boards, company newsletters, audio visual presentations, and attitude surveys.

Employee participation and involvement

In 1972, the EC introduced a draft Fifth Directive on the harmonisation of company law. One of its proposals was that public limited companies with more than 500 employees establish a two-tier board system in which employees are represented on the supervisory board. A revised text, produced in July 1983, set the minimum number of employees at 1000 (counting also the employees of subsidiaries) and offered a wider choice of structures for employee participation.

The EC has also introduced (in 1980) a draft directive on procedures for informing and consulting employees, known as the *Vredeling Directive*. A revised text was issued in July 1983. The directive, would, if implemented, require head offices of organisations employing 1000 or more workers within the EC (including multinationals) to inform and consult employees in subsidiaries or separate establishments through local management.

Both draft directives were referred to working groups of officials from member countries for detailed consideration.

During 1989, the EC summit at Strasbourg adopted the Community Charter of Fundamental Social Rights – the 'Social Charter'. This took the form of a declaration of basic principles to be followed by binding proposals from the Commission. Consultation of the workforce is one of the rights included in the Social Charter.

In the UK, both the government and the CBI have urged companies to voluntarily develop schemes for worker participation and consultation, believing that successful employee involvement depends as much on a spirit of co-operation as on the existence of formal machinery. The TUC has also played an active role, through the European Trade

Union Confederation, in seeking the adoption of an instrument such as the Fifth Directive, and has welcomed the proposal, by the EC, for information and consultation rights in complex and international corporations.

L The Employment Act 1982 requires that the directors' report of a company with more than 250 employees must contain a statement describing the action taken in the previous year to introduce, maintain, or develop arrangements concerned with employee involvement in running the company. This statement should show what has been done to:

- provide employees systematically with information on matters that concern them as employees
- consult employees or their representatives on a regular basis so that employees' views can be taken into account in making decisions which are likely to affect their interests
- encourage the involvement of employees in the company's performance through an employees' share scheme or some other means
- achieve a common awareness among employees of the financial and economic factors affecting the company's performance.

The annual report requirements are contained within Section 235 and Schedule 7 of the Companies Act 1985.

14 Disciplinary rules, procedures and grievances

L The Employment Protection (Consolidation) Act (Sections 1–5) requires that the written particulars of employment, to be given to each employee, must specify:

- disciplinary rules applicable to the employee
- a person to whom the employee can apply if dissatisfied with any disciplinary decision referring to him or her, or if seeking redress of any grievance relating to his or her employment
- how such an application should be made
- any steps following from such an application.

Under the Employment Act 1989, employers with fewer than 20 employees do not have to provide a written note of disciplinary rules which apply to them.

An employer who fails to provide the information required can face a complaint before an industrial tribunal. However, if a problem reaches a tribunal on another matter, for example unfair dismissal, the failure to have an adequate grievance/disciplinary procedure will be a serious disadvantage to the employer when the case is considered.

Some rules and procedures are necessary for the effective operation of any organisation. Without them, inconsistency and unfairness are likely to occur. Thus it is sensible to anticipate and prevent problems and misunderstandings by drawing up and implementing a comprehensive set of rules and procedures.

Drawing up a disciplinary procedure

The ACAS *Code of Practice on Disciplinary Practice and Procedures in Employment* gives general guidance on the approach to be adopted. Note particularly:

The code is reproduced in Appendix IV

- the small firm is required to adopt the same general approach as the larger employer, though 'it may not be practicable to adopt all the detailed provisions'. Tribunals are now required to take account of the size, and administrative resources, of an employer, when assessing the fairness of a decision to dismiss

- rules 'should not be so general as to be meaningless'
- penalties attached to breach of the rules should be made clear and, in particular, employees should be given 'a clear indication of the type of conduct which may warrant summary dismissal' (that is, dismissal without notice)
- management has the duty of ensuring that employees understand the rules, for example, by explaining rules to staff, especially at induction
- the comments on suspension, see paragraph 12(c) of the code
- the employer who intends to change an existing system, or to introduce a new one, should discuss and agree the proposals with employees or their representatives beforehand
- investigations should always be carried out before taking any disciplinary action, even summary dismissal, and 'before a decision is made or penalty imposed the individual should be interviewed and given the opportunity to state his or her case'. The way in which a disciplinary interview is carried out is important and may usefully form the basis for training to develop the necessary level of skill. An approach is suggested overleaf.

Grievances

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Individual grievances are usually dealt with by a procedure separate from the disciplinary appeals procedure. It is, in any event, necessary to have a clearly defined process for dealing with grievances.

See paragraph 16 of the code of practice

Make sure that grievance/disciplinary procedures are known, understood and followed, both by those operating them and those to whom they apply, and that penalties for breach of procedures are clearly defined. Hasty ill-considered decisions are dangerous.

ACAS advisory handbook

There was an intention to replace the original code of practice, and a draft was produced in 1986. However, the new code was not published. Instead, ACAS has issued an advisory handbook, *Discipline at Work*, which provides guidance on good practice and complements the original code of practice. The handbook includes advice on dealing with absence problems and sub-standard work.

Disciplinary interview

Before the interview

1. Suspend the employee, if desirable and legally possible.
2. Establish the facts; do not accept hearsay evidence.
3. Establish the name and background of the offender; date and time of offence.
4. Obtain the relevant records of employment.
5. Don't delay unnecessarily.
6. Get statements/witnesses if appropriate, but without delay.
7. Find out about precedent/other similar cases.
8. Tell employee the purpose of the interview and allow a representative to be brought if the employee wishes.
9. Arrange for the interview to be held at a time and place that best suits both parties and see that it is not interrupted.

During the interview

1. Start the interview by letting the employee know the general charge and specific details of the offence.
2. Avoid giving the impression that you have already made up your mind.
3. Stick completely to work behaviour and avoid all reference to personalities. Conduct the interview in a factual fashion without emotion or anger.
4. Give the employee the opportunity to state his or her case.
5. Listen and note.
6. Keep control of the interview. Stick to the points at issue.
7. Throughout the interview provide opportunities for the offender to admit his or her shortcomings.
8. Decide action.
9. Give a decision or say when it will be given.

After the interview

1. Confirm in writing, and to representative if appropriate, the decision taken.
2. Keep a record.
3. Do not harbour a grudge against the employee – he or she required discipline and received it. Give the person the benefit of real hope that it has achieved its true purpose and by both word and action let him or her know that you consider it a thing of the past.

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15 Dismissal

Dismissing staff deprives them of their livelihood and is costly to the employer (who has to get replacements, with all the disruption and effort that this entails). In addition, legal protection given to individual employees means that if the dismissal is shown to be 'unfair', the employer can lose a considerable amount of money in compensation, and can be required to re-employ or reinstate the employee.

See Chapter 2

Dismissal is no longer an easy way out of an employment difficulty. It is a final and expensive last resort to be used only when the situation really demands it and when the discipline/grievance procedures have been exhausted.

A dismissal take place when:

- employment is terminated by the employer, with or without notice
- an employer refuses to renew a fixed term contract
- an employee leaves because of the employer's conduct
- an employer refuses to allow a woman to return to work after confinement.

Unfair dismissal

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Every member of staff has the right not to be unfairly dismissed by the employer, and to present a complaint to an industrial tribunal, that he or she was unfairly dismissed by the employer. When such a claim is made, the ex-employee has to show that the dismissal took place and that he or she qualifies to make a claim for unfair dismissal. The employer has to show a valid reason for the dismissal. The tribunal has to decide whether 'the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and that question shall be determined in accordance with equity and the substantial merits of the case' and is required to take account of 'the size and administrative resources of the employer's undertaking' in coming to a decision.

Section 57 of the Employment Protection (Consolidation) Act lists the reasons acceptable as 'potentially valid':

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- capability: the inability to carry out the work the employee was engaged to do, for example because of sickness, lack of skill, technical, or academic qualifications
- conduct
- illegality (such as employing a driver without a licence, or a foreign worker without a work permit)
- true redundancy (see Chapter 16)
- other substantial reason.

The Act, and subsequent Employment Acts, state reasons that will automatically be classed as 'unfair', including dismissal caused by:

- being a member of an independent trade union, or proposing to join one
- taking part, or proposing to take part, in independent trade union activities at an appropriate time (outside work hours or during time agreed by the employer for union activity)
- not being a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or refusing or proposing to refuse to become or remain a member.

The introduction of the concept of unfair dismissal has been interpreted by many as meaning that it is now virtually impossible to dismiss an employee. This is emphatically untrue. If there is a *valid* reason for dismissal, an employee can be fairly dismissed at any time. Good disciplinary procedures, clear rules, accurate records all play a part in the process.

Claiming unfair dismissal

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Any employee can claim unfair dismissal provided that he or she:

- has completed two years' continuous service. In general, an employee's service is presumed to have been continuous unless there is proof to the contrary, *and*
- works 16 hours per week or more (eight hours per week if the employee has five years' or more service), *and*
- is not over the normal retirement age. Unless the organisation has a clearly stated retirement age, 65 will be taken as the normal age.

See Department of Employment booklet *Continuous Employment and a Week's Pay* for details

The continuous service qualification does not apply if the claim for unfair dismissal is brought on the grounds of sex or race discrimination, or trade union membership or activity. The age qualification does not apply in trade union membership or activity cases.

Constructive dismissal

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An employee can be regarded as having been dismissed if he or she terminates the contract because the employer's behaviour is such that the employee feels that the employment contract has been breached or repudiated. For example, if the work an employee is required to do is drastically changed without prior agreement, or if the terms of employment are changed, for example by the withdrawal of some allowances and privileges an employee *may* be entitled to resign and claim constructive dismissal.

Case law has given guidance on this matter: Lord Denning, when Master of the Rolls, said 'an employee is entitled to treat himself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment . . . the employee in those circumstances is entitled to leave without notice or to give notice . . . if he continues for any length of time without leaving, he will be regarded as having elected to affirm the contract and will lose his right to treat himself as discharged'.

In a later case (Lewis v Motorworld Garages), another principle was established. 'If the employer is in breach of an express term of a contract of employment, of such seriousness that the employee would be justified in leaving and claiming constructive dismissal, but the employee does not leave and accepts the altered terms of employment, and if subsequently a series of actions by the employer might constitute together a breach of the implied obligation of trust and confidence, the employee is entitled to treat the original action by the employer which was a breach of the express terms of the contract as a part – the start – of the series of actions which, taken together with the employer's other actions, might cumulatively amount to a breach of the implied terms.'

So it can be seen that breaches may be of express or implied terms, and that the employee may claim constructive dismissal based either on a significant breach, or on a series of breaches.

It is sensible to protect organisations by making managers and supervisors aware of the nature of constructive dismissal, and by ensuring that employees who leave are interviewed to establish the reason for their departure.

If it is necessary to change any of the terms or conditions of employment of your staff, it is in any case good practice to consult and agree this with staff rather than attempt to impose the change unilaterally.

Wrongful dismissal

An employee is wrongfully dismissed if not given the proper period of notice (or wages in lieu) or if he or she has not received holiday pay, sick pay, or other benefits to which

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there is an entitlement under the contract of employment unless he or she has so seriously misconducted him or herself as to 'repudiate the contract' (that is, indicated an intention not to be bound by the contractual duties) in which case the employee can be summarily dismissed. Stealing from a customer, or a flagrant breach of hygiene rules, might constitute grounds for summary dismissal, without notice or pay in lieu of notice. Even where summary dismissal is warranted, the case must be properly investigated, and the employee given a chance to put his or her side of the story, before a decision is taken. The burden of showing that the employee has 'repudiated' the contract lies with the employer and such wrongful dismissal cases are dealt with by civil courts (County or High Court). Even if successful in dealing with a wrongful dismissal, an employer can still face a claim for compensation for unfair dismissal brought through an industrial tribunal.

See Chapter 7

If an employer summarily dismisses an employee, but to avoid ill-will decides to make some payment, short of paying the notice pay, it is sensible to ensure that the organisation's position is protected against a possible 'unfair dismissal' claim by sending a note with the payment saying that it is made 'without prejudice' to the company's right to dismiss summarily.

Avoiding problems

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Managers and supervisors can take a number of steps to protect the organisation from problems and perhaps unfair dismissal cases that reach an industrial tribunal. The conduct of disciplinary interviews is important. Other good personnel practices include:

- never dismiss in anger
- get a second opinion before dismissing any employee who is eligible to claim unfair dismissal
- if necessary, suspend the employee on full pay while investigating the circumstances, before making a decision
- if possible, do not dismiss without the presence of a witness

See Appendix IV

- follow an agreed discipline/dismissal procedure, which should contain provision for at least one written warning before dismissal
- keep a record of all warnings, even verbal ones. The time limit for making a complaint is three months from the date of termination but tribunals have discretion to hear complaints out of time where it was not reasonably practicable for the complaint to be made earlier

See Chapter 9

- make sure you understand the regulations on maternity leave, and so forth.

An employee not performing to the required standard should be dealt with according to whatever company procedure has been established. The points covered might include:

- make sure that the required level of performance has been agreed with the employee
- bring specific instances of poor performance to the employee's notice
- give the employee the opportunity to improve, and assistance in doing so within a stated period
- if, despite these efforts, no improvement occurs, dismiss the employee, using the disciplinary procedure as appropriate.

Dismissing

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If it is necessary to dismiss an employee, the Employment Protection (Consolidation) Act (Section 53) amended by the Employment Act 1989 (Section 15) requires an employer to give a dismissed employee, on request, a statement of the reasons for dismissal. The employee must have been employed for two years and the statement must be provided within 14 days of the request, which need not be made in writing. (Make sure that there is no chance of a verbal request being overlooked.)

The statement should be worded carefully, referring if possible to written warnings already given: it is admissible as evidence in any proceedings, including unfair dismissal cases. For example:

I refer you to memos dated ..... and ..... (copies of which you received) in which I warned you that if the conduct complained of continued I would have no alternative other than to dismiss you. (The conduct in question was *[describe it]*.) The reason for your dismissal was the continuation of that conduct in spite of warnings.

If an employer refuses to provide a statement, a complaint may be made to an industrial tribunal, which if it upholds the complaint:

- may make a declaration as to what it finds were the reasons for dismissal
- shall make an award for the employer to pay a sum equal to two weeks' pay to the ex-employee.

If asked to give a reference on someone who has been dismissed, it is in an employer's own interests to make sure that the reference does not conflict with the dismissal. An interesting tribunal decision indicated that employers 'cannot have it both ways', that is giving a good reference, even if it is intended to help the ex-employee, while having

dismissed for some serious offence. This should help employers to believe in the references they receive, too!

Employers are not legally required to provide a reference, but it is normal practice to do so on request, and the reference must be accurate.

Taking a dismissal case to a tribunal

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Tribunal cases are usually initiated by an employee (or ex-employee) who feels that he or she has been wrongly dealt with and applies to the tribunal for a decision, see below. The employee completes an *Originating Application to an Industrial Tribunal* (Form IT1) which is sent to the Central Office of Industrial Tribunals, which sends photocopies to the employer named and to ACAS, together with explanatory notes and a form for reply. It is important to ensure that the person receiving such correspondence in an organisation knows how to deal with it and that a reply is sent within the 14-day time limit. If this is not done the organisation may lose the right to have its side of the case heard.

In 1988, 41 per cent of unfair dismissal cases registered with an industrial tribunal were settled through ACAS conciliation, and 25 per cent of applications were withdrawn. So only 34 per cent of cases reached a tribunal hearing

When the employer's reply has been received (or even before this, if appropriate) the Conciliation Officer appointed by ACAS may contact the parties involved, or may be called in by them, to attempt to reach an agreed settlement. Information given to a Conciliation Officer by either of the parties involved is treated in confidence, and is not admissible as evidence in a tribunal case except with the consent of the person giving the information. Conciliation is a very useful process that greatly reduces the number of cases actually reaching an industrial tribunal.

Conciliation should therefore be seriously considered as an alternative to allowing the case to proceed. This decision should be based on a mature consideration of the strengths and weaknesses of the case. While it may be tempting to proceed if it is felt that a principle is at stake, this can be costly in terms of time and money.

If conciliation is chosen it is important to make sure that the agreement is registered, through the Conciliation Officer, with the tribunal, to avoid subsequent difficulties.

Checklist

Who can bring a claim before an industrial tribunal

All employees with a right to:

1. fair dismissal or compensation for unfair dismissal
2. guarantee payments
3. medical suspension payments
4. protection against discrimination or victimisation because of activity in, or membership of, a trade union

5 time off for public duties
6 written reasons for dismissal
7 itemised pay statements
8 insolvency payments
9 redundancy consultation protective award
10 redundancy payments
11 paid time off to look for a job if redundant
12 interim relief if dismissed for trade union activities
13 protection against sex or marital discrimination
14 protection against racial discrimination
15 equal pay
16 written statement of terms of employment
17 employment rights on the transfer of an undertaking
18 deductions from wages as permitted by the Wages Act 1986

Women employees with a right to:

1 protection from dismissal for pregnancy
2 suitable available alternative work during pregnancy
3 maternity pay
4 return to work following the birth of a child
5 paid time off for antenatal care

Independent trade union officials/representatives/members with a right to:

1 officials: paid time off for union duties and training
2 paid time off for safety representatives: training
3 representatives: right to redundancy consultation
4 members: right to membership, activity and time off
5 information, and consultation about the transfer of an undertaking

Union members (or potential members) with a right to:

1 protection against unreasonable exclusion or expulsion from a trade union when in employment where a union membership agreement applies

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The tribunal hearing

In 1988, 52 per cent of applicants and 70 per cent of respondents were represented at the tribunal hearing. Applicants were legally represented in 32 per cent of cases, and by trade unions in 20 per cent of cases. Respondents were legally represented in 45 per cent of cases and by other people, such as personnel specialists or consultants, in 25 per cent of cases

Tribunals are open to the public. It may be worthwhile sitting in on some cases to see how they are handled, the sort of information applicants and respondents are required to produce, to learn about the importance of having good, well assembled written evidence to support the case, and of the usefulness of witnesses

Each tribunal comprises a chairman (always an experienced lawyer) and two other members, one nominated by employer organisations and the other by employee organisations. They have the task of deciding whether the matter before them (for example, the decision to dismiss) was 'reasonable in all the circumstances', taking into account the size and administrative resources of the employer.

Much can be said for an employer presenting his or her own case at a tribunal – only employers or managers know the full circumstances of their organisation and its activities. Even so, it is usually wise to consult a legal adviser on the initial preparation of a case. Do not let the flexibility of tribunals lull you into a false sense of security. Seek advice, plan your case, prepare fully.

If necessary, tribunals can request either party to take part in a pre-hearing assessment of the case that they intend to submit at the full hearing. Under the Employment Act 1989, the tribunal can demand a deposit of up to £150 from either party. If their case appears unlikely to succeed the tribunal will advise them of this, and that costs could be awarded if they choose to pursue their contentions to a full hearing.

Statutory minimum notice periods

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Under the Employment Protection (Consolidation) Act (Section 49) an employee working 16 hours per week or more (or eight hours per week after five years' service) is entitled to receive notice as follows:

- one week after one month's continuous service
- two weeks after two years' continuous service
- three weeks after three years' continuous service, and one week for each additional year's service, to maximum of 12 weeks after 12 years' continuous service.

The employee is required to give the employer one week's notice after one month's service.

These notice periods are the legal minima. Many employers give, and require to receive, longer periods of notice. This is perfectly acceptable, if agreed as part of the original contract.

There is an important exception: employees who have a contract for three months or less (such as seasonal workers) are not entitled to a week's notice unless they actually work for more than three months. This must be made clear at the time of engagement.

Sick employees

Employees who are sick for a lengthy period or for a series of short spells put an employer in a difficult situation. How long should they be kept on the books, with a job kept open, and when is it right to dismiss?

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As in any dismissal case, all the circumstances need to be examined with particular attention to:

- the possibility of offering alternative employment
- ensuring that a full independent medical report is obtained, establishing when and if the employee will be able to return
- following the normal sickness scheme procedures
- ensuring consistency of treatment in different parts of the organisation and that length of service, special circumstances and so forth, are taken into account
- making sure that the employee is given adequate warning before any final action such as dismissal is taken. If possible the employee should be visited, to establish the circumstances and to discuss the options available.

In some circumstances, having found out as much as possible about the nature of the problem, an employer may be justified in giving a series of disciplinary warnings for short-term sickness absences, which, if no improvement occurs could warrant dismissal on grounds of capability.

Fixed term contracts

Fixed term contracts of employment end on a specific date and cannot normally be ended by either side giving notice before that date. The termination without renewal of such a contract can form the basis of a claim for unfair dismissal, unless the contract includes a waiver taking away the employee's right to claim unfair dismissal. The Employment Act 1980 (Section 8) enables fixed term contracts of one year or more to contain such a waiver clause.

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16 Redundancy

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The Department of Employment will give detailed guidance on entitlement to statutory redundancy payments which are based on age, length of service and weekly rate of pay

If the workload of a business diminishes, staffing may have to be reduced through redundancy. Sometimes this step can be avoided by introducing early retirement, or some form of work sharing. A sensible arrangement is to have an agreed policy stating how selection for redundancy will take place if it is necessary, and defining the payments to be made.

Redundant employees who meet eligibility conditions are entitled to compensation through the Redundancy Payments Scheme (RPS). They must:

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Before January 1990, the retirement age for men was different to that for women

- be over 18 years of age, and below 65 years, or the company's normal, non-discriminatory retirement age, if this is lower
- have at least two years' continuous service over the age of 18
- normally work for 16 hours or more per week, or have worked for eight hours a week or more for at least five years.

Employers have to prove that a dismissal was not on the grounds of redundancy in order to resist a claim for a redundancy payment.

It should be noted that:

- a payment must be claimed by an employee within six months of the date of termination of employment
- unfair selection for redundancy enables the employee to claim unfair dismissal if the necessary qualifying period of continuous employment is met
- it may constitute unlawful, indirect discrimination for part-time employees to be made redundant first; such action would have to be justified in a particular case, if unlawful discrimination was alleged.

Some employers negotiate redundancy payment schemes providing for payments to employees above the level required by the Redundancy Payments Scheme.

Pre-consultation

Many organisations include redundancy agreements as part of their normal employment practice, in which they specify such details as the method of selection for redundancy and levels of payment. They also regard it as good industrial relations practice to give as much notice as possible to employees to be made redundant.

The provisions of the Employment Act 1980 which reinforce the need for consultation – see below – apply to recognised independent trade unions and employees in most types of occupations. Unlike the redundancy payment provisions, they apply regardless of how long an employee has worked for the employer, or for how many hours per week he or she is employed. The only exclusion important to the hotel and catering industry covers staff employed for a fixed term of three months or less (unless they are in fact employed beyond the third month).

Consulting the trade unions

If it is proposed to dismiss any employee as redundant and an independent trade union is recognised for the group or category of employees to which the redundant employee belongs, the employer must consult a representative of that trade union about the proposed dismissal at the earliest opportunity before it takes place. *The trade union must be consulted whether or not the employee is a member.* This gives the unions the chance to discuss the plans and see whether there are ways of reducing the numbers involved, or mitigating the effects of the redundancy, before the employer announces individual redundancies.

The person consulted should be authorised by the union to carry on collective bargaining, for example the shop-steward, or the district union official, or, if appropriate, a national or regional official.

Consultation with the union concerned should always begin at the earliest opportunity and within a specified time before the first dismissal takes effect:

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- if 10 to 99 employees may be dismissed as redundant at one establishment over a period of 30 days or less, *at least 30 days in advance*
- if 100 or more employees may be dismissed as redundant at one establishment over a period of 90 days or less, *at least 90 days in advance.*

An employer must give the trade union representatives details of the proposed redundancy, numbers and descriptions of those to be dismissed, proposed method of selection and dismissal. He or she must take note of, reply to and if possible adopt, any representations that are made about the proposals.

Even if circumstances change dramatically or with great speed, the employer must take such steps to comply with the requirements as circumstances allow. If an employer fails to consult with the unions at the specified time, or take note of their proposals, or reply to them, the unions can apply to an industrial tribunal for a 'protective award' requiring the employer to continue to pay the employees concerned for a specific period.

The employer must also notify the regional Department of Employment office of his or her proposal (on form HR1).

No trade union involvement

When an employer does not recognise an independent trade union, the regional Department of Employment office must be notified within the same time period as applies to the consultation with trade unions.

A notification form HR1 and a leaflet explaining the notification and consultation requirements can be obtained from regional offices of the Department of Employment

The purpose of this procedure is to allow the Department of Employment to plan to redeploy or retrain the staff involved.

Failure to carry out the notification may lead to court proceedings with a fine of up to £2,000 on summary conviction.

The Department of Employment will need information in writing about the employer's plans in order to be able to carry out its functions.

Alternative employment trial period

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A redundant employee is entitled to a four week trial period in any alternative employment the employer may offer if the provisions of the new contract differ wholly or in part from the previous one. The trial period may be for longer than four weeks if both parties agree (but if so, the agreement must be in writing). For the purposes of the Redundancy Payments Act an extended trial period can be agreed, but only for training purposes.

The four week trial period is to enable both the employee and employer to decide whether the arrangement is satisfactory to both parties – if not, the redundancy payment entitlements are preserved and the claim for redundancy pay must be made within six months of the end of the trial period.

17 Employment rights on the transfer of an undertaking

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The rights of employees working for a company which has been taken over or merged with another are specified in the Transfer of Undertakings (Protection of Employment) Regulations 1981.

Under the Regulations, employees who are employed by the old employer at the time of transfer automatically become the employees of the new employer, as if their contracts of employment were originally made with the new employer. The new employer takes over the employment liabilities of the old employer, with the exception of criminal liabilities and occupational pension rights.

ACAS will advise if there is any doubt – for example as to whether a particular transfer is covered by the Regulations

If an independent trade union is recognised for the purpose of collective bargaining, its representatives of the employees affected have to be informed about the transfer. If the old or the new employer intends taking measures in relation to the transfer affecting the employees, the trade union representatives also have to be consulted about the proposed measures.

Any dismissal of an employee for a reason connected with the transfer will be considered unfair unless it can be shown that the dismissal was necessary for an economic, technical or organisational reason and that the employer acted reasonably in dismissing for such a reason. In such cases, redundancy provisions may apply and further advice may be obtained from the nearest Jobcentre, unemployment benefit office or Redundancy Payments Office.

18 Working conditions

The Health and Safety at Work, etc, Act 1974 (HASAWA) established a range of duties for employers and employees. Legislation sets out minimum standards that must be observed. As well as complying with the law, it is worthwhile providing conditions that are as pleasant as possible to maintain staff morale and increase productivity.

Health and safety

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Under Section 2 of HASAWA, employers have the duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees. In particular, this duty covers:

- the provision and maintenance of plant and systems of work
- the safe use, handling, storage and transport of articles and substances
- the provision of necessary information, instruction, training and supervision
- the maintenance of a safe workplace, and safe ways in and out
- the provision of a safe working environment, and adequate facilities and arrangements for welfare at work
- the preparation and revision of a written health and safety policy statement, and bringing the statement and any revisions to the notice of employees. The policy statement is not a legal requirement if there are fewer than five employees, but it should be noted that trainees on ET or YT count towards this total.

Before HASAWA, some health and safety protection was given to employees in the hotel and catering industry by the Offices, Shops and Railway Premises Act 1963 (OSRPA) or the Factories Act 1961. Under these Acts, a number of absolute requirements must be met. One such requirement is the need for a minimum temperature of 16 degrees centigrade to be reached within one hour of people starting work. But such a rule has exceptions; for example, it would not be achievable in a cold store. Absolute requirements differ from the requirements of HASAWA, where the term 'reasonably practicable' is used.

Some sections of OSRPA and the Factories Act have been repealed, and some premises have always been outside their scope. But evidence suggests that enforcing officers are using many absolute requirements of previous legislation as standards to apply when assessing whether the 'reasonably practicable' test has been met.

Dangerous substances

The Control of Substances Hazardous to Health Regulations 1988 (COSHH) became effective in October, 1989. The hazard from a substance is its potential to cause harm.

Substances can enter the body in a variety of ways: by absorption through the skin, by being swallowed, or through being inhaled. Those who could be exposed to risk include not only employees, but also guests and customers, contractors, and other visitors.

Under COSHH, every employer must:

- assess the risk to health arising from work, and decide what precautions are needed
- introduce appropriate measures to prevent or control the risk
- ensure that control measures are used, that equipment is properly maintained, and that procedures are observed
- where necessary, monitor the exposure of the workers, and carry out an appropriate form of surveillance of their health
- inform, instruct, and train employees about the risks and the precautions to take.

Although the risks from substances used in hotel and catering establishments may be considered to be low, COSHH applies to every workplace. Most hazardous substances are likely to be found among cleaning materials. Manufacturers or suppliers will provide information sheets giving the guidance that is needed to comply with the Regulations.

Information

For further help with health and safety matters, contact your local environmental health department or the area office of the Health and Safety Executive. The *Mastercraft* book *Health Hygiene and Safety in the Hotel and Catering Industry* available from the HCTC, provides detailed guidance, and there is a sample health and safety policy statement in the HCTC self-study unit *Rights and Responsibilities*

The Health and Safety Information for Employees Regulations 1989 require every employer to provide health and safety information. This can either be displayed as a poster, or can be distributed in leaflet form, and replaces the requirement to display abstracts of OSRPA or the Factories Act. The posters and leaflets are available from HMSO bookshops, and some booksellers. Employees must also be informed of the local addresses of the enforcing authority, which will either be the Health and Safety Executive or the Environmental Health Department, and the Employment Medical Advisory Service (EMAS).

19 First aid and accidents

First aid regulations

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The Health and Safety (First Aid) Regulations 1981 require all places of employment, except domestic service, to be provided with adequate first aid facilities. The Regulations require that:

- employers must provide first aid equipment, facilities, and personnel adequate and appropriate to the circumstances of the employer
- an employer must inform employees of the arrangements (a health and safety policy statement could be an appropriate means)
- self-employed persons are required 'to provide adequate equipment to enable first aid to be rendered to themselves'.

In some circumstances, it is necessary for the employer to ensure that suitably trained and qualified people are present to render first aid to employees. Briefly it depends on:

- the number of employees
- the nature of the undertaking
- the degree of hazard in the work
- the size of the establishment and distribution of the employees.

For details see the code of practice *The First Aid Regulations*, available from HMSO, also *First Aid at Work*, published by the Health and Safety Executive, and the HCTC book *Health, Hygiene and Safety in the Hotel and Catering Industry*

Where a trained first aider is not a requirement, a person must be appointed to take charge of situations involving injury or illness, and the first aid equipment and facilities. More than one person may be needed to ensure cover at all times that employees are on the premises. Those appointed will need training in, for example, the action to take in the event of an accident, the maintenance of first aid equipment and reporting procedures.

Accident records

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All accidents involving employees at work must be recorded. A book, Form F2509, is produced for this purpose and is available from HMSO or through booksellers. Employees must know where the accident book is kept.

Reporting accidents and dangerous occurrences

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Under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1985 (RIDDOR), the enforcing authority (usually the Environmental Health Department) must be notified in writing within seven days when an accident at work involves an employee, a self-employed person, a trainee, or a member of the public, and the accident results in death, or major injuries or conditions including:

- fracture of the skull, spine or pelvis
- fracture of any bone in the arm or wrist, but not a bone in the hand; or in the leg or ankle, but not a bone in the foot
- amputation of a hand or foot; or a finger, thumb or toe, or any part thereof if the joint or bone is completely severed
- loss of sight of an eye, or certain eye injuries
- injury or loss of consciousness resulting from electric shock
- loss of consciousness resulting from lack of oxygen
- illness or loss of consciousness from absorption of any substance by inhalation, ingestion or through the skin
- illness requiring medical treatment where there is reason to believe that this resulted from exposure to a pathogen or infected material
- any other injury resulting in the person being admitted into hospital for more than 24 hours.

Form F2508 is used for written notification

Notification in any of these cases must be made by telephone immediately, followed by a written report.

Where a dangerous occurrence takes place, whether or not anyone is injured, notification must also be given. Dangerous occurrences include:

- collapse of a lift or hoist
- explosion of a boiler
- explosion or fire resulting in a suspension of work for more than 24 hours.

Except where the person is a member of the public, notification must be made in cases where the affected person:

- is incapacitated for his or her normal work for more than three days as a result of an injury caused by an accident at work, or
- dies within a year of the reportable injury that led to his or her death.

Reportable diseases which might be a particular risk in hotel and catering work, and which must therefore be reported, include:

- cataract – in work involving exposure to electromagnetic radiation, including radiant heat
- occupational asthma – in work where dusts arise from processing, handling, transporting or storing barley, oats, rye, wheat or maize and meal, or flour made from them.

20 Employee relations training

Reviewing existing practices

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From time to time, organisations should review their employment practices and employee relations policy to establish where improvements can be made. This should not only be done with employment legislation in mind but with a view to better understanding between management and staff.

Carrying out such a review may highlight:

- need for changes in the organisation
- need for changes in procedures or for the development of clear policies
- areas where costs need to be reduced or standards improved
- areas where gaps in knowledge and skill need to be filled by appropriate training.

ACAS will help

Many organisations have adopted the practice of carrying out a periodic 'audit' of their employee relations policies and practices. Such an audit might include:

- interviews or attitude surveys with managers, staff and their representatives
- an examination of procedures, rules and records in the light of legal requirements and current 'good practice'.

Further details are given in *Auditing Industrial Relations*, published by ER Consultants, see Appendix II

Audits are used to identify the cause of current problems and as a means of problem prevention. They also yield valuable information about training needs and are useful in that they give factual information and do not rely on subjective opinion.

Training needs

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Employee relations is essentially practical, concerned with the ways in which people at work interact in their work situation. *Skills* and *attitudes* are just as important as *knowledge* and *information*. So training plans need to include how to improve levels of skill in:

- negotiation
- interviewing (for example, in disciplining, counselling or selection of staff)

- understanding employees' motivation and attitudes
- communicating – verbally or in writing
- conduct of meetings (as chairman or committee member)
- social and interpersonal skills.

The HCTC can help in setting up training in a systematic way, and the HCTC Operational Management programme covers such subjects as leadership and motivation, task management, communications, getting the right staff and staff retention

Employee relations training should be tackled systematically. In this aspect it is no different from other training; indeed employee relations training should form part of the company's overall training plan.

The following checklist provides some suggestions to help establish training needs. It is also important for the policy maker of a business to have a wide and up-to-date knowledge of the subject, to be aware of what is happening in employee relations in the industry and the country generally, what other employers are doing locally (not just in the hotel and catering industry) and what trade union and government attitudes and plans are.

Checklist

Training needs analysis

1 Are personnel policy makers aware of:

trends in legislation

trade union activity in the industry and in general

the role of trade or other advisory bodies

the effect of employee relations policy on day-to-day practice

2 Are those implementing employee relations policy aware of:

the effect of policy on day-to-day practice

their role in implementing the policy

3 Does the company's recruitment/selection policy/procedure conform with good employee relations practice:

describing the job

describing the person

advertising

interviewing techniques

sex discrimination

race discrimination

work permits

employing disabled people

employing ex-offenders

use of references

are key company personnel aware of the requirements of the law and good employee relations practice regarding recruitment and selection:

the policy makers	supervisors
managers	staff representatives

4 Does the company's engagement/administration policy/procedure conform with good employee relations practice

induction

written statement of terms of employment

company pay policy

company pay procedures

wages council orders

equal pay

hours of work

shift arrangements

training policy

health and safety policy

staff records

staff appraisal

are key company personnel aware of the requirements of the law and good employee relations practice regarding engagement of staff and administration policy/procedures:

the policy makers	supervisors
managers	staff representatives

are all employees aware of those aspects of the company's administration policy that affect them

5 Does the company's leave and absence arrangements conform with good employee relations practice, with regard to time off for:

union official duties

union activity

public duties

redundant employees

sickness

holidays

pregnancy

payment for time off

are key company personnel aware of the requirements of the law and good employee relations practice regarding leave and absence arrangements:

the policy makers supervisors

managers staff representatives

are all employees aware of the company's leave and absence arrangements

6 If the company recognises a trade union:

do its arrangements for joint consultation and other matters conform with good employee relations practice

are key company personnel aware of the structure of the union

is the role of shop stewards/staff representatives clear

are key personnel trained in negotiating skills

are key personnel aware of the role of procedure and other agreements with the trade union

are key personnel aware of what information should go to

union members non-union members

union representatives

7 Are company personnel at all levels aware of:

the role and purpose of staff committees/associations

the role of staff representatives

the role of safety representatives

8 Does the company's grievance and disciplinary procedure conform with good employee relations practice:

policies

company rules

procedures

warnings/appeals/time limits

representation

fair dismissal

constructive dismissal

instant dismissal

suspension

unfair dismissal

wrongful dismissal

who can claim unfair dismissal

redundancy

retirement

are company personnel aware of the requirements of the law and good employee relations practice regarding grievance and disciplinary procedures:

the policy makers supervisors

managers staff representatives

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Planning and carrying out the training

Basic information and explanations should be given as part of an employee's induction. For example, company policies and procedures, conditions and terms of employment and disciplinary rules should be covered.

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Where changes are taking place, it may be necessary to consider special training programmes. For example, if a negotiating agreement is reached with a trade union, extensive training for supervisors and managers will be needed in:

- matters covered by the agreement
- the role of the staff representative
- rights to time off for trade union matters.

Supervisors and managers may need special assistance in dealing with staff representatives for the first time.

The HCTC can provide consultancy advice on training methods and resources, see Appendix II for addresses of regional offices

A number of different types of programme can be devised, depending on a company's needs and circumstances. Some suggestions are given overleaf.

There is no one best way of carrying out employee relations training. Suitable arrangements need to be made taking into account the needs and circumstances of the organisation.

Employee relations training programmes

1 Basic training

. . . training associated with setting up a basic employee relations framework. This means identifying the specific functions, roles and jobs of those involved in the employee relations process and providing training in appropriate skills and knowledge. This will be individual training for each person and group involved to establish a sound basis on which further training can be built. This first level training can then lead on to . . .

2 Updating training

. . . training to support an established framework by strengthening basic skills and knowledge or developing new ones. Updating training will involve continuous monitoring and be related to specific changes (often minor) arising from, for example, actual or planned changes in employee relations policy, legislation, environment and circumstances. This training might then need to be supplemented by . . .

3 Training for major change

. . . training related to major change which demands detailed and comprehensive plans to be made. The changes are likely to be specific and have a potentially high impact on the employee relations system, such as recognition of other unions, productivity agreements, job evaluation schemes, legislation. This is a key area for trainers in terms of current development at national level and the whole social and economic environment in which companies have to operate. Finally, consideration might be given to . . .

4 Training for the future

. . . training to develop a favourable employee relations environment or climate in the longer term. This training is likely to be of a less specific nature. Its objective, for example, might be to:

- promote a climate within which employee relations can develop on a continuing basis
- build a joint working approach to identifying and solving problems
- develop a maturity of approach and relationships, leading to greater joint involvement in the operation of the business.

Appendix I

Glossary of terms

Arbitration	A process by which parties involved in a dispute over which they have been unable to reach a solution agree to submit to the decision of an independent judge. It is usually agreed, in advance, to accept the decision as binding.
Associated employer	Any two employers are associated if one is a company of which another (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.
Certification Officer	Official responsible for giving certificates of independence to trade unions, checking union accounts, and dealing with financial assistance for union ballots.
Check-off	Direct deduction of union dues from wages by the employer (who then pays the dues to the union). A small percentage is sometimes retained by the employer to cover his or her administrative costs.
Closed shop	An agreement between a particular trade union and the employer permitting the employment of that trade union's members only. All statutory support for the closed shop was removed by the Employment Act 1988. Under proposals published in late 1989, it will be unlawful to deny people a job either because they are or are not, union members, so signalling an end to the closed shop.
Code of practice	A document produced by an official body (such as ACAS) which gives guidance on an employment matter. A code of practice can be cited in legal proceedings, but a person cannot be prosecuted for failing to observe any of its provisions.
Collective agreement	A negotiated agreement, which is not enforceable at law, between an employer and employees' representatives, covering rates of pay, or terms and conditions of employment, or both.
Collective bargaining	Negotiations intended to result in a collective agreement governing the relationship between the parties involved in the following matters:

- terms and conditions of employment, or the physical conditions in which any workers are required to work
- engagement or non-engagement, or termination or suspension of employment, or the duties of employment of one or more workers
- allocation of work or the duties of employment as between workers or groups of workers
- matters of discipline
- facilities for officials of trade unions
- machinery for negotiation or consultation, and other procedures relating to any of the foregoing matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures.

Conciliation

Process by which the opposing parties in a dispute are brought together and helped by an outside party to resolve the dispute – can occur *individually* (as in unfair dismissal cases) or *collectively* (larger industrial disputes). If collective conciliation fails then the final stage of the process is often to attempt to obtain agreement to and terms of reference for *arbitration* on the matter.

Continuity of employment

Many employment rights can be claimed only after an employee has been employed continuously for a specified period. Thus it is often important to be able to clarify whether a particular period of employment is continuous, or whether such absence as maternity leave, sickness, or short time working have broken the continuity.

In any proceedings under employee's rights legislation, the employee's period of employment is presumed to have been continuous unless the employer proves otherwise. Disputes are dealt with by industrial tribunals.

For further details (this is a complex issue) see Department of Employment booklet No 11

Basically, to count towards a continuous period of employment, a work week must be one in which:

- the employee is actually employed for 16 hours or more, *or*
- the contract with the employer to work 16 hours or more continues, even if 16 hours are not worked (for example because of holidays, sickness), *or*
- the employee, having been employed for five years, works under a contract for eight hours or more a week.

Custom and practice

Refers to activities which may not be formally agreed between management and staff but which have come to be accepted as normal by continual practice.

Employers' association — Organisation of employers whose principal purposes include regulation of relations between employers and workers (for instance, the Engineering Employers' Federation but not trade associations such as the Brewers' Society and the BHRCA).

General unions — Large, national trade unions having as members workers from a very wide range of industries. Members can be unskilled, semi-skilled or skilled, such unions (for example the TGWU) also have separate sections for supervisory members.

Genuine occupational qualification (GOQ) — A term used to describe a situation in which the requirements of a job are such that only a member of a particular sex or race can effectively carry out the job, for example being of a particular racial group can be a GOQ for waiting staff in an ethnic restaurant. Such GOQs are not automatic exceptions to the law on discrimination; each case needs to be taken on its merits.

Independent trade union — A trade union which is not under the domination or control of an employer or a group of employers or of one or more employers' associations, and is not liable to interference by an employer or any such group or association (arising out of the provision of financial or material support or by any other means whatsoever) tending towards such control.

Only independent trade unions qualify for the benefits contained in the Trade Union and Labour Relations Act 1974, the various Employment Protection and Employment Acts, and the Trade Union Act 1984. Unions have to apply to the Certification Officer to provide conclusive evidence of independence.

Job evaluation — A term used to cover a number of systematic methods of determining the relative worth of jobs in a manner acceptable to the job holders.

Joint consultation — The process by which employers and employees discuss, before any decisions are taken, matters affecting the efficiency of the enterprise and the interests of the employees to which representatives can contribute. It is generally carried out by committees, incorporating trade union representatives if applicable, with an agreed constitution.

Joint regulation — A term used to refer to arrangements allowing both staff and management to participate in the management and development of the organisation.

Mediation The process of attempting to reach an agreement with the help of an independent third party, who makes recommendations which are not binding, but may provide a means of settling a previously insoluble problem.

Negotiation Bargaining carried out between two parties, generally over terms and conditions of employment, such as pay and hours.

Procedure agreement An agreement made between an employer or employers' association and trade union(s) describing the machinery to be used for consultation, or settlement by negotiation, of terms and conditions of employment, including trade union recognition, facilities for shop-stewards, dismissal, redundancy, and grievances. Thus a procedure agreement defines how, at what level, problems arising, and settlement of *substantive agreements* can be dealt with.

Recognition The process by which an employer agrees to deal with a union representing all or some of the staff. The terms of recognition are usually set out in a *recognition agreement*. Often, recognition starts with an agreement that the employer will deal with the union on disciplinary matters only. The scope of the agreement may then be gradually widened by mutual agreement, until it relates to all of the matters referred to in the definition of *collective bargaining*.

Recognition agreement The written statement describing recognition arrangements between an employer and union. Though recognition is not always formalised in writing it is sensible to avoid confusion by producing a written agreement setting out the degree of recognition granted.

Reinstatement In the context of Section 69 of the Employment Protection (Consolidation) Act 1978 this term refers to an order made against an employer by an industrial tribunal requiring that an employee be reinstated in his or her job and be treated in all respects (seniority, pension rights, pay and so forth) as if the dismissal had not taken place.

Shop-steward/ staff representative A member of the trade union who is elected by union members in the department or section he or she represents, in elections held according to union rules. This person represents the views and interests of colleagues, and is a vehicle for communicating management proposals to them. The senior shop-steward is sometimes referred to as the *convenor*.

Staff association/ house union An organisation established, and often financed, by an employer to facilitate communication and consultation with the staff.

Status quo An arrangement whereby, if a particular change, such as working arrangements, causes a dispute, it is agreed to revert to the original practice until agreement is reached.

Substantive agreement This type of agreement between a trade union and employer sets out the terms of employment which it has jointly been decided will apply. It can deal with matters such as wages and other payments, hours of work, overtime, holidays, grading, manpower planning, pensions, redundancy and other matters affecting work organisation. Some substantive agreements will be restricted to a few of these items. The machinery used for arriving at a substantive agreement is described in a *procedure agreement*.

Trade dispute A dispute between workers and their employer connected wholly or mainly with any of the following matters:

- terms and conditions of employment, or the physical conditions in which any workers are required to work
- engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers
- allocation of work or the duties of employment as between workers or groups of workers
- matters of discipline
- the membership or non-membership of a trade union on the part of a worker
- facilities for officials of trade unions
- machinery for negotiation or consultation and other procedures, relating to any of the foregoing matters, including the recognition of employers or employers' associations of the right of a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures.

Trade union An organisation of workers whose principal purposes include the regulation of relations between workers and employers. A union on the Certification Officers' list gets tax relief, and can apply to be categorised as *independent*.

Trade union recognition The recognition of the union by an employer, or two or more associated employers, to any extent, for the purpose of *collective bargaining*.

Union membership agreement See *closed shop*.

Union official — Any person who is an officer of the union, or of a branch or section of the union or who (not being such an officer) is a person elected or appointed in accordance with the rules of the union to be a representative of its members or some of them, including any person so elected or appointed who is an employee of the same employer as the members, or one or more of the members, whom he or she is to represent.

Week — As defined in the Employment Protection (Consolidation) Act 1978, a *week* means, in relation to an employee whose remuneration is calculated weekly ending with a day other than Saturday, a week ending with that other day, and in relation to any other employee, a week ending with Saturday.

White collar unions — Term used to describe unions representing the interests of clerical, administrative, technical and management staff (such as MFSU, APEX and NALHM). Some large general unions also have white collar sections (MATSA in the GMB and ACTS in TGWU).

Appendix II

Information, advice, and resources

Advisory, Conciliation and Arbitration Service (ACAS)

27 Wilton Street
London SW1X 7AZ
Tel: 071–210 3000

Requests for advice can also be made to ACAS regional offices in Birmingham, Bristol, Cardiff, Fleet, Glasgow, Leeds, London, Manchester, and Newcastle upon Tyne; see local telephone directory

Free advice and practical assistance on employee relations problems.

Codes of practice and advisory publications.

ACAS has produced the following advisory booklets: No 1, *Job Evaluation*, No 2, *Introduction to Payment Systems*, No 3, *Personnel Records*, No 4, *Labour Turnover*, No 5, *Absence*, No 6, *Recruitment and Selection*, No 7, *Induction of New Employees*, No 8, *Workplace Communications*, No 9, *The Company Handbook*, No 10, *Employment Policies*, No 11, *Employee Appraisal*, No 12, *Handling Redundancies*, and No 13, *Hours of Work*. Also published are advisory handbooks: *Employing People – a Handbook for Small Firms*, and *Discipline at Work*. These publications are available free of charge from ACAS. New advisory publications are published regularly.

The following are also available free of charge: *This is ACAS*, *AIDS in Employment*, *Using ACAS in Industrial Disputes*, *The ACAS Role in Conciliation*, *Arbitration and Mediation*, *Advice and Help*, *Individual Employment Rights – ACAS Conciliation Between Individuals and Employers*, *ACAS Publications List*, *Work Research Unit Publications List*.

The following priced publications are available from HMSO or booksellers: *Industrial Relations Handbook* (a comprehensive guide to British industrial relations), *Code of Practice No 1: Disciplinary Practice and Procedures in Employment* (reproduced in Appendix IV), *Code of Practice No 2: Disclosure of Information to Trade Unions for Collective Bargaining Purposes*, *Code of Practice No 3: Time Off for Trade Union Duties and Activities*.

The Brewers' Society

42 Portman Square
London W1H 0BB
Tel: 071–486 4831

Information and guidance service for members.

British Association for Commercial and Industrial Education (BACIE)
16 Park Crescent
London W1N 4AP
Tel: 071–636 5351

Wide range of publications, courses, seminars, a monthly journal *Transition*, and a major information unit.

British Hotels Restaurants and Caterers Association (BHRCA)
40 Duke Street
London W1M 6HR
Tel: 071–499 6641

Information and advice service for members.

British Institute of Innkeeping
51–53 High Street
Camberley
Surrey GU15 3RG
Tel: (0276) 691003

Information and advice service for members; seminars.

British Institute of Management (BIM)
Management House
Cottingham Road
Corby
Northants NN17 1TT
Tel: (0536) 204222

Information and advice service for members; books and seminars; management checklists on a variety of industrial relations topics.

Commission for Racial Equality (CRE)
Elliott House
10–12 Allington Street
London SW1E 5EH
Tel: 071–828 7022

Information and advice on employment matters relating to race and nationality, including a *Race Relations Code of Practice*, and papers on *Equal Opportunity in Employment*, and *Why Keep Ethnic Records?*

Croner Publications Ltd
Croner House
Kingston upon Thames
Surrey KT2 6SR
Tel: 081–547 3333

Loose-leaf reference books, updated regularly. Titles include: *Croner's Reference Book for Employers*, *Croner's Employment Law*, and *Catering* (which includes a section on employment). Also management guides including: *Guide to Fair Dismissal*, *Guide to Absence*, and *Guide to Discipline*.

Department of Employment (DE)

Caxton House
Tothill Street
London SW1H 9NF
Tel: 071–273 3000

Regional offices in Basingstoke, Birmingham, Bristol, Cardiff, Edinburgh, Leeds, London, Manchester and Newcastle upon Tyne

Advice on local labour market, and recruitment services through local Jobcentres. *Employment Gazette*, published monthly, contains statistics on tourism and employment, articles on labour relations, and up-to-date information on changes in legislation. It can be consulted at many public reference libraries or obtained on subscription from HMSO.

The DE produces a range of guides to employment legislation, available, normally free of charge, from DE offices. Other titles include: *Employment News* (the DE newspaper), *Guide to Employment, Training and Enterprise Programmes, Codes of Practice on Picketing* and *The Closed Shop*, and *Fact Sheets on Employment Law*.

Eddington Hook Ltd

406 Vale Road
Tonbridge
Kent TN9 1XR
Tel: (0732) 357755

Supplies books for managers and students in the hotel and catering industry. Titles include: *Hotel and Catering Law* by F J Bull and J D G Hooper, *Human Resources Management in the Hotel and Catering Industry* by M J Boella, and *A Manual of Staff Management in the Hotel and Catering Industry* by J P Magurn.

EC Information Office

8 Storey's Gate
London SW1P 3AT
Tel: 071–222 8122

A telephone enquiry service for information on EC developments. A library, for reference only (check opening times before visiting).

Employment Relations

Compass House
80 Newmarket Road
Cambridge CB5 8DZ
Tel: (0223) 315944

The Resource Centre Service provides a combination of reference and professional expertise. Information and advice are available by telephone or letter on all aspects of human resource management. Subscribers can also visit the Resource Centres at Cambridge and Glasgow to consult sources and use the preview facility for audio-visual material. A wide range of courses, seminars and company support is also available.

ER Consultants

Compass House
80 Newmarket Road
Cambridge CB5 8DZ
Tel: (0223) 322565

This consultancy group provides a combination of advisory, research, consulting and training services in the field of managing people at work. The 'Personnel Adviceline' service provides practitioners with advice and information across the fields of management development, employee relations, communications, pay and benefits, quality management, employment and human resource strategy.

ER Consultants also produce a range of publications and multi-media packages for the employee relations specialist and trainer. Titles include: *Auditing Industrial Relations, Grievance Handling, An Introduction to Negotiation, Collective Bargaining, Managing Change, Quality Circles,* and *Getting into Work*.

Engineering Industry Training Board Publications

PO Box 75
Stockport SK1 4PH
Tel: 061–480 5285

Titles include: *An Employee Management Handbook* (a practical guide on managing people and employment law), and *Discipline at Work* (a practical resource pack including training units).

Equal Opportunities Commission (EOC)

Overseas House
Quay Street
Manchester M3 3HN
Tel: 061–833 9244

The EOC also has offices in Cardiff and Glasgow

The EOC produces a wide range of booklets and guides on aspects of sex discrimination and equal pay dealing with rights.

Gower Publishing Co Ltd

Gower House
Croft Road
Aldershot
Hants GU11 3HR
Tel: (0252) 331551

Gower publishes a range of useful publications including *The Concise Encyclopaedia of Industrial Relations*, and *The Trade Union Handbook*, both by Arthur E Marsh. Gower TFI Ltd, its subsidiary company, distributes a wide range of videos and some training packages.

Guild Training

6 Royce Road
Peterborough
PE1 5YB
Tel: (0733) 315315

A wide range of video training programmes is available including management training, staff training, sales training, and hygiene and safety in catering.

HM Stationery Office (HMSO)

51 Nine Elms Lane
London SW8 5DR
Tel: 071–873 0011

HMSO bookshops in Belfast, Birmingham, Bristol, Edinburgh, London and Manchester. Many booksellers act as HMSO agents

HMSO stocks the relevant Acts of Parliament and a range of other industrial relations and training publications, listed in *Sectional list 21 – Department of Employment*. Codes of practice, produced by ACAS, are available from HMSO, as are the codes of practice *The First Aid Regulations* and *Control of Substances Hazardous to Health*.

Home Office

60 Queen Anne's Gate
London SW1H 9AT
Tel: 071–273 3000

The following leaflets are available from the Home Office: *A Guide to the Rehabilitation of Offenders Act 1974* and *Wiping the Slate Clean*.

Hotel and Catering Training Company

Head Office and Southern region:
International House
High Street
Ealing
London W5 5DB
Tel: 081–579 2400

Scotland
9 Logie Mill
Edinburgh EH7 4HG
Tel: 031–557 4677

Central
Stonebow House
The Stonebow
York YO1 2NP
Tel: (0904) 626134

Western
Prudential Buildings
Wine Street
Bristol BS1 2PH
Tel: (0272) 264074

Books, training aids, audio-visual material, seminars and courses, information and advice on training in employee relations. Titles available include: self-study units *Getting the Right Staff*, *Staff Retention*, and *Rights and Responsibilities*, and books *Employing People in the Licensed Trade*, and *Health, Hygiene and Safety in the Hotel and Catering Industry*.

Hotel, Catering and Institutional Management Association (HCIMA)

191 Trinity Road
London SW17 7HN
Tel: 081–672 4251

Professional management association for managers and potential managers in any area of the food and accommodation industry. Information service for members. Wide range of directories and reading lists. Monthly magazine *Hospitality*. Salaries and conditions of employment advice for members. Careers advice. Examining body.

House of Commons Public Information Office

Tel: 071–219 4272

Advise on all matters relating to the Houses of Parliament, including the dates of publication and progress through their respective houses of all parliamentary publications, including green and white papers and statutory instruments. They will also advise on the publication date and source of non-parliamentary papers (such as departmental consultative documents) wherever possible.

House of Lords Journal and Information Office

Tel: 071–219 3107

Incomes Data Services Ltd
193 St John Street
London EC1V 4LS
Tel: 071-250 3434

An independent research centre reporting on all aspects of industrial relations. IDS publishes fortnightly reports on pay changes, studies of pay and other conditions of groups of workers, and changes to pay and conditions in EC countries. Among other publications is a monthly review of management pay.

IDS Study No 441, *Catering Workers' Pay* (1989), reports on the pay and conditions of directly employed staff in 33 organisations across the whole spectrum of the hotel and catering industry.

Industrial Relations Services
18–20 Highbury Place
London N5 1QP
Tel: 071-354 5858

IRS publish *Industrial Relations Review and Report*, a twice monthly publication which reports on the latest developments in personnel and industrial relations. Also available from IRS are: *Pay and Benefits Bulletin*, *Industrial Relations Legal Information Bulletin*, *Health and Safety Information Bulletin*, *Industrial Relations Law Reports*, *European Industrial Relations Review*, *Equal Opportunities Review*, and *Occupational Health Review*.

The Industrial Society
Peter Runge House
3 Carlton House Terrace
London SW1Y 5DG
Tel: 071-839 4300

Publications Department
17–23 Southampton Row
London WC1B 5HA
Tel: 071-831 8388

In-company advice and training on management and industrial relations. Job evaluation exercises undertaken. Publications, information, conferences and consultancy services.

Publications include a series *Notes for Managers* (including *Guide to Employment Practices*, *Industrial Relations*, and *Salary Management*), guides to employment legislation and conditions of work, and video training programmes.

Institute of Personnel Management (IPM)
IPM House
Camp Road
Wimbledon
London SW19 4UX
Tel: 081-946 9100

A wide range of publications (over 120 titles currently listed), and courses for personnel and general management.

Special 'Company Service Plan' for small firms with no professional personnel department.

Kogan Page Ltd
120 Pentonville Road
London N1 9JN
Tel: 071-278 0433

Kogan Page publishes a range of books including: *A Handbook of Industrial Relations Practice* by Kevin Hawkins (1989), *Industrial Relations Training for Managers* by Chris Brewster and Stephen Connock (1983), *A Handbook of Training Management* by Kenneth P Robinson (1988), *Human Resource Management Handbook* published with IPM (1989) and *The Training Directory 1990* (published in association with BACIE).

Labour Research Department

78 Blackfriars Road
London SE1 8HF
Tel: 071-928 3649

Bargaining Report, and other occasional publications.

Local Government Training Board

Arndale House
Arndale Centre
Luton LU1 2TS
Tel: (0582) 451166

Training materials and publications. Training advice and support for local government. Information service, and training and management information (TRAMIS) database.

Low Pay Unit

9 Upper Berkeley Street
London W1H 8BY
Tel: 071-262 7278

Regional offices in Birmingham, Manchester, South Shields, Yorkshire and Humberside, and Scotland

The Unit is a national research, advice, and campaigning organisation. It publishes a range of reports on low pay and associated problems including a number of studies of wages councils and the hotel and catering industry.

Office of Wages Councils

Steel House
11 Tothill Street
London SW1H 9NF
Tel: 071-273 4812

Wages Inspectorate offices in Birmingham, Brighton, Bristol, Edinburgh, Leeds, London, Manchester, and Newcastle upon Tyne

For copies of current Wages Council orders: *Licensed Non-Residential Establishment* (LNR); *Licensed Residential Establishment and Licensed Restaurant* (LR); *Unlicensed Place of Refreshment* (UPR).

Pathway Further Education Centre

Havelock Campus
Havelock Road
Southall
Middlesex UB2 4NZ
Tel: 081-571 2241

Publications, information and assistance in training ethnic minority workers in the use of English, and to inform employers about the communications training needs of such people and their managers.

Personnel Today
Quadrant House
The Quadrant
Sutton
Surrey SM2 5AS
Tel: 081–661 3946

Personnel Today is a fortnightly publication available free of charge to those working in personnel, training, or recruitment. Includes features on employment legislation and industrial relations.

Professional Publishing Ltd
South Quay Plaza
183 Marsh Wall
London E14 9BR
Tel: 071–538 5386

Publishes *The Personnel Manager's Factbook*, a loose-leaf reference work covering all aspects of personnel management; updated four times a year.

Rank Training
Cullum House
North Orbital Road
Denham
Uxbridge
Middlesex UB9 5HL
Tel: (0895) 834 142

Rank Training, together with its subsidiary company Rank Millbank, produce videos on topics which include discipline interviewing, communication, induction, industrial safety, and leadership. Many of the programmes are British made.

Small Firms Service
Dial 100, and ask the operator for Freephone Enterprise

Enquiry, signposting, and counselling services for small businesses.

Tolley Publishing Company Ltd
Tolley House
2 Addiscombe Road
Croydon
Surrey CR9 5AF
Tel: 081–686 9141

Publications include: *Tolley's Employment Handbook* (7th edition 1990).

Trade unions

The trade unions principally involved in the industry are:

Hotel and Catering Union
Thorne House, Ruxley Ridge, Claygate, Esher,
Surrey XT10 0TL
Tel: (0372) 62081
(Part of The General, Municipal and Boilermakers Union)

Transport and General Workers Union
Transport House, Smith Square, London SW1P 3JB
Tel: 071–828 7788

National Association of Licensed House Managers
9 Coombe Lane, London SW20 8NE
Tel: 081–947 3080

Rail, Maritime and Transport Union (Hotels Department)
Unity House, Euston Road, London NW1 2BL
Tel: 071–387 4771
(Previously the National Union of Hotel and Catering Employees, which was part of The National Union of Railwaymen)

Union of Shop, Distributive and Allied Workers
Oakley, 188 Wilmslow Road, Fallowfield,
Manchester M14 6LJ
Tel: 061–224 2804

Transport Salaried Staffs' Association
Walkden House, Melton Street, London NW1 2EJ
Tel: 071–387 2101

Trades Union Congress Publications Department
Congress House
Great Russell Street
London WC1B 3LS
Tel: 071–636 4030

A range of publications on collective bargaining, equal rights, trade union education, and health and safety.

Workers' Educational Association
Temple House
9 Upper Berkeley Street
London W1H 8BY

A series of studies including *Trade Union Studies Journal* (a twice yearly journal of theory and practice) and *Guide to Recently Published Material in Industrial Relations* (a quarterly checklist of books, pamphlets, journals, government publications, and articles in trade union journals).

Appendix III

Checklist of employment legislation

When resolving a particularly difficult problem, it can be useful to refer to the original document. Acts of Parliament may initially look forbidding, but are worth consulting once you know how they are laid out – each Act contains a comprehensive list and description of contents, as well as a section entitled *Interpretation* which defines terms used in the Act.

The list below covers the relevant legislation. Copies of the Acts can be found in most reference libraries or obtained from HMSO or through booksellers:

- Disabled Persons (Employment) Acts 1944 and 1958
- Shops Act 1950
- Offices, Shops and Railway Premises Act 1963
- Redundancy Payments Act 1965 (now largely replaced by the Employment Protection (Consolidation) Act 1978)
- Equal Pay Act 1970
- Trade Union and Labour Relations Act 1974
- Rehabilitation of Offenders Act 1974
- Health and Safety at Work, etc, Act 1974
- Employment Protection Act 1975
- Sex Discrimination Act 1975
- Race Relations Act 1976
- Trade Union and Labour Relations (Amendment) Act 1976
- Employment Protection (Consolidation) Act 1978
- Employment Act 1980
- Employment Act 1982
- Social Security and Housing Benefits Act 1982
- Data Protection Act 1984
- Health and Social Security Act 1984
- Trade Union Act 1984
- Sex Discrimination Act 1986
- Social Security Act 1986
- Wages Act 1986
- Employment Act 1988
- Employment Act 1989

Appendix IV

Code of practice: Disciplinary Practice and Procedures in Employment, ACAS, 1977

There was an intention to replace the 1977 code of practice. Instead ACAS has issued an advisory handbook *Discipline at Work*, which provides further guidance on good practice (see page 117)

A failure on the part of any person to observe any provision of a Code of Practice shall not of itself render him or her liable to any proceedings; but in any proceedings before an industrial tribunal or the Central Arbitration Committee, any Code of Practice issued under this section shall be admissible in evidence, and if any provision of such a Code appears to the tribunal or Committee to be relevant to any question arising in the proceedings it shall be taken into account in determining that question. (Employment Protection Act 1975, Section 6 (11).)

Amendment

The statutory provisions listed below referred to in this code have been repealed and re-enacted as provisions of the Employment Protection (Consolidation) Act 1978, as follows:

(a) The Contracts of Employment Act 1972 (as amended by the Employment Protection Act 1975) has been replaced by Section 1 of EP(C)A 1978 [paragraph 3 below and the footnote[1]].

(b) The Trade Union and Labour Relations Act 1974 Schedule 1, paragraph 21(4), as amended by the Employment Protection Act 1975 Schedule 16, Part III has been replaced by Section 67(2) of EP(C)A [footnote[2]].

Introduction

This code supersedes paragraphs 130 to 133 (inclusive) of the code of practice in effect under Part 1 of Schedule 1 to the Trade Union and Labour Relations Act 1974, which paragraphs shall cease to have effect on the date on which this code comes into effect.

1 This document gives practical guidance on how to draw up disciplinary rules and procedures and how to operate them effectively. Its aim is to help employers and trade unions as well as individual employees – both men and women – wherever they are employed regardless of the size of the organisation in which they work. In the smaller establishments it may not be practicable to adopt all the detailed provisions, but most of the features listed in paragraph 10 could be adopted and incorporated into a simple procedure.

Why have disciplinary rules and procedures?

2 Disciplinary rules and procedures are necessary for promoting fairness and order in the treatment of individuals and in the conduct of industrial relations. They also assist an organisation to operate effectively. Rules set standards of conduct at work; procedure helps to ensure that the standards are adhered to and also provides a fair method of dealing with alleged failures to observe them.

3 It is important that employees know what standards of conduct are expected of them and the Contracts of Employment Act 1972 (as amended by the Employment Protection Act 1975) requires employers to provide written information for their employees about certain aspects of their disciplinary rules and procedures[1].

4 The importance of disciplinary rules and procedures has also been recognised by the law relating to dismissals, since the grounds for dismissal and the way in which the dismissal has been handled can be challenged before an industrial tribunal[2]. Where either of these is found by a tribunal to have been unfair the employer may be ordered to reinstate or re-engage the employees concerned and may be liable to pay compensation to them.

Formulating policy

5 Management is responsible for maintaining discipline within the organisation and for ensuring that there are adequate disciplinary rules and procedures. The initiative for establishing these will normally lie with management. However, if they are to be fully effective the rules and procedures need to be accepted as reasonable both by those who are to be covered by them and by those who operate them. Management should therefore aim to secure the involvement of employees and all levels of management when formulating new or revising existing rules and procedures. In the light of particular circumstances in different companies and industries trade union officials[3] may or may not wish to participate in the formulation of the rules but they should participate fully with management in agreeing the procedural arrangements which will apply to their members and in seeing that these arrangements are used consistently and fairly.

[1]Section 1 of the Employment Protection (Consolidation) Act 1978 requires employers to provide employees with a written statement of the main terms and conditions of their employment. Such statements must also specify any disciplinary rules applicable to them and indicate the person to whom they should apply if they are dissatisfied with any disciplinary decision. The statement should explain any further steps which exist in any procedure for dealing with disciplinary decisions or grievance. The employer may satisfy these requirements by referring the employees to a reasonably accessible document which provides the necessary information.

[2]Section 67(2) of the Employment Protection (Consolidation) Act 1978 specifies that a complaint of unfair dismissal has to be presented to an industrial tribunal before the end of the three month period beginning with the effective date of termination.

[3]Throughout this code, 'trade union official' has the meaning assigned to it by S.30(1) of the Trade Union and Labour Relations Act 1974 and means, broadly, officers of the union, its branches and sections, and anyone else, including fellow employees, appointed or elected under the union's rules to represent members.

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Rules

6 It is unlikely that any set of disciplinary rules can cover all circumstances that may arise: moreover the rules required will vary according to particular circumstances such as the type of work, working conditions and size of establishment. When drawing up rules the aim should be to specify clearly and concisely those necessary for the efficient and safe performance of work and for the maintenance of satisfactory relations within the workforce and between employees and management. Rules should not be so general, as to be meaningless.

7 Rules should be readily available and management should make every effort to ensure that employees know and understand them. This may be best achieved by giving every employee a copy of the rules and by explaining them orally. In the case of new employees this should form part of an induction programme.

8 Employees should be made aware of the likely consequences of breaking rules and in particular they should be given a clear indication of the type of conduct which may warrant summary dismissal.

Essential features of disciplinary procedures

9 Disciplinary procedures should not be viewed primarily as a means of imposing sanctions. They should also be designed to emphasise and encourage improvements in individual conduct.

10 Disciplinary procedures should:

(a) be in writing

(b) specify to whom they apply

(c) provide for matters to be dealt with quickly

(d) indicate the disciplinary actions which may be taken

(e) specify the levels of management which have the authority to take the various forms of disciplinary action, ensuring that immediate superiors do not normally have the power to dismiss without reference to senior management

(f) provide for individuals to be informed of the complaints against them and to be given an opportunity to state their case before decisions are reached

(g) give individuals the right to be accompanied by a trade union representative or by a fellow employee of their choice

(h) ensure that, except for gross misconduct, no employees are dismissed for a first breach of discipline

(i) ensure that disciplinary action is not taken until the case has been carefully investigated

(j) ensure that individuals are given an explanation for any penalty imposed

(k) provide a right of appeal and specify the procedure to be followed.

The procedure in operation

11 When a disciplinary matter arises, the supervisor or manager should first establish the facts promptly before recollections fade, taking into account the statements of any available witnesses. In serious cases consideration should be given to a brief period of suspension while the case is investigated and this suspension should be with pay. Before a decision is made or penalty imposed the individual should be interviewed and given the opportunity to state his or her case and should be advised of any rights under the procedure, including the right to be accompanied.

12 Often supervisors will give informal oral warnings for the purpose of improving conduct when employees commit minor infringements of the established standards of conduct. However, where the facts of a case appear to call for disciplinary action, other than summary dismissal, the following procedure should normally be observed:

(a) In the case of minor offences the individual should be given a formal oral warning or if the issue is more serious, there should be a written warning setting out the nature of the offence and the likely consequences of further offences. In either case the individual should be advised that the warning constitutes the first formal stage of the procedure.

(b) Further misconduct might warrant a final written warning which should contain a statement that any recurrence would lead to suspension or dismissal or some other penalty, as the case may be.

(c) The final step might be disciplinary transfer, or disciplinary suspension without pay (but only if these are allowed for by an express or implied condition of the contract of employment), or dismissal, according to the nature of the misconduct. Special consideration should be given before imposing disciplinary suspension without pay and it should not normally be for a prolonged period.

13 Except in the event of an oral warning, details of any disciplinary action should be given in writing to the employee and if desired, to his or her representative. At the same time the employee should be told of any rights of appeal, how to make it and to whom.

14 When determining the disciplinary action to be taken the supervisor or manager should bear in mind the need to satisfy the test of reasonableness in all the circumstances. So far as possible, account should be taken of the employee's record and any other relevant factors.

15 Special consideration should be given to the way in which disciplinary procedures are to operate in exceptional cases. For example:

(a) *Employees to whom the full procedure is not immediately available.* Special provisions may have to be made for the handling of disciplinary matters among nightshift workers, in isolated locations or depots or others who may pose particular problems for example because no one is present with the necessary authority to take disciplinary action or no trade union representative is immediately available.

(b) *Trade union officials.* Disciplinary action against a trade union official can lead to a serious dispute if it is seen as an attack on the union's functions. Although normal disciplinary standards should apply to their conduct as employees, no disciplinary action beyond an oral warning should be taken until the circumstances of the case have been discussed with a senior trade union representative or full-time official.

(c) *Criminal offences outside employment.* These should not be treated as automatic reasons for dismissal regardless of whether the offence has any relevance to the duties of the individual as an employee. The main considerations should be whether the offence is one that makes the individual unsuitable for his or her type of work or unacceptable to other employees. Employees should not be dismissed solely because a charge against them is pending or because they are absent through having been remanded in custody.

Appeals

16 Grievance procedures are sometimes used for dealing with disciplinary appeals though it is normally more appropriate to keep the two kinds of procedure separate since the disciplinary issues are in general best resolved within the organisation and need to be dealt with more speedily than others. The external stages of a grievance procedure may, however, be the appropriate machinery for dealing with appeals against disciplinary action where a final decision within the organisation is contested or where the matter becomes a collective issue between management and a trade union.

17 Independent arbitration is sometimes an appropriate means of resolving disciplinary issues. Where the parties concerned agree, it may constitute the final stage of procedure.

Records

18 Records should be kept, detailing the nature of any breach of disciplinary rules, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records should be carefully safeguarded and kept confidential.

19 Except in agreed special circumstances breaches of disciplinary rules should be disregarded after a specified period of satisfactory conduct.

Further action

20 Rules and procedures should be reviewed periodically in the light of any developments in employment legislation or industrial relations practice and, if necessary, revised in order to ensure their relevance and effectiveness. Any amendments and additional rules imposing new obligations should be introduced only after reasonable notice has been given to all employees and, where appropriate, their representatives have been informed.

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